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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–16 of March 14, 2003

Waiver of Coup-Related Sanctions for Pakistan

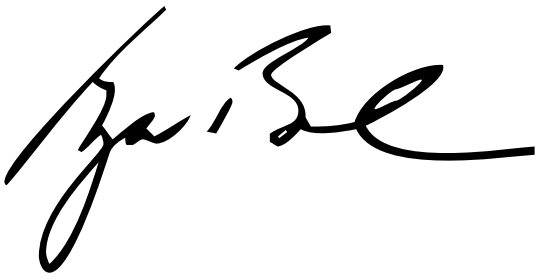
Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 1(b)(1) of the Pakistan Waiver Act, Public Law 107–57, I hereby determine and certify that a waiver of section 508 of the Foreign Operations, Export Financing, and Related Programs Appropriations, Division E of the Consolidated Appropriations Resolution, 2003, Public Law 108–7

- would facilitate the transition to democratic rule in Pakistan; and
- is important to United States efforts to respond to, deter, or prevent acts of international terrorism.

I hereby waive, with respect to Pakistan, section 508 of Division E of Public Law 108–7.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 14, 2003.

[FR Doc. 03–6953
Filed 3–20–03; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 7654 of March 18, 2003

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2003

By the President of the United States of America

A Proclamation

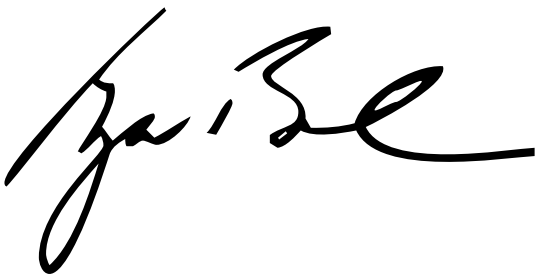
After nearly 400 years of rule by the Ottomans, Greece declared its independence on March 25, 1821. Long before that, ancient Athenians created a Greek culture that valued human liberty and dignity, and modern Greeks have demonstrated that preserving freedom is a powerful motivating force. Today, on Greek Independence Day, we recognize the ancient Greek influence in framing our own Constitution and celebrate the Greek-American heritage that continues to strengthen our communities and enrich our society.

Bound by history, mutual respect, and common ideals, America and Greece have been firm allies in the great struggles for liberty. Our countries fought together in every major twentieth-century war, and today, we remain united in the war against terror that threatens the future of every nation. We are working together to achieve peace and prosperity in the Balkans and southeastern Mediterranean. As the current president of the European Union, Greece is also playing a critical role in our efforts to confront many other global problems that affect our nations and our world.

Our commitment to the friendship between our two nations has grown from strong bonds of tradition and shared fundamental values. On Greek Independence Day, I encourage all Americans to recognize the countless contributions Greek Americans have made to our country. Embodying the independence and creativity that have made our country strong, their proud history is a source of inspiration for our Nation and our world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 25, 2003, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of March, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–6964
Filed 3–20–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF02

Small Business Size Standards; Job Corps Centers

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is establishing a $30 million size standard in average annual receipts for Job Corps Center activities classified within the ''Other Technical and Trade Schools'' industry (North American Industry Classification System (NAICS) code 611519). The current size standard for all other activities within this industry remains at $6 million in average annual receipts.

DATES: This final rule is effective April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On November 22, 2002, the SBA issued a rule in the **Federal Register** (67 FR 70330) proposing to establish a $30 million size standard for Job Corps Center activities classified within the ''Other Technical and Trade Schools'' industry (NAICS code 611519). The SBA received requests to review the size standard applicable to Job Corps Centers from the U.S. Department of Labor (DOL) and three other organizations. Job Corps Center contracts account for more than $900 million annually and represent about 60 percent of the DOL's procurement expenditures.

The requestors sought the SBA's review of the size standard after the SBA's Office of Hearings and Appeals (OHA) rendered a decision that a Job Corps Center contract was improperly classified under the Base Maintenance sub-category of Facilities Support Services. (See NAICS Appeal of Global Solutions Network, Inc., SBA No. NAICS–4478, dated March 5, 2002.) In that decision, OHA determined that the proper classification for an activity that trains individuals in life skills and readies them for the job market through academic studies and/or technical training is ''Other Technical and Trade Schools,'' NAICS code 611519. The effect of this decision was to change the size standard for Job Corps Center contracts from $20 million to $5 million. (On February 22, 2002, an inflation adjustment increased the $5 million size standard for NAICS 611519 to $6 million and the $20 million size standard for Base Maintenance to $23 million. See 67 FR 3041, dated January 23, 2002.)

The SBA reviewed the reasons presented by the requesters to increase the $6 million size standard and data on Job Corps Center contracts and bidders. Based on an analysis of that information, as described in the November 22, 2002, rule, it proposed a $30 million size standard specifically for Job Corps Center contracts. The SBA received eight comments on the proposed size standard. After giving careful consideration to the comments, the SBA has decided to adopt its proposed $30 million size standard.

Discussion of Comments on the Proposed Rule

The SBA received eight comments on the proposed size standard from seven business concerns and one Federal agency. In summary, seven commenters supported changing the $6 million size standard. Six of these commenters supported the proposed size standard of $30 million and one commenter recommended a size standard between $12 million and $15 million. One commenter opposed the SBA's proposal to establish a size standard above $6 million. Below is a summary of the major issues raised by the comments on the proposed rule and the SBA's position.

Comments Supporting the Proposed Job Corps Center Size Standard

Six commenters supported the proposed $30 million size standard for Job Corps Centers. Two of these commenters pointed out that many successful small business Job Corps Center contractors would exceed the size standard because of the average dollar value of these contracts, ''and therefore either would not be eligible to compete for the center they have been running or the contract would no longer be able to be let as a small business set-aside.'' In turn, the government would be faced with ''remarkable turnover * * * that will actually cost the government more in dollars and performance in the long run.'' In addition, these commenters pointed out that this turnover has the potential for the DOL to eliminate small business set-asides, and thus, decrease its contracting dollars to small businesses.

Four commenters stated that the proposed increased size standard will improve the competitiveness of Job Corps Center small businesses. They claimed that this change will allow small businesses in this activity to grow and achieve stability, to develop economies of scale in their operations, to operate more than one center, and to remain in the Job Corps Center program. They also contend that a larger base of small businesses will encourage more solicitation competition and lower prices. Two other commenters supported the SBA's proposal by stating that the SBA's analysis captured the industry's characteristics and reflected the current status of businesses competing to operate Job Corps Centers.

The SBA agrees with these commenters. As discussed in the proposed rule, the average yearly funding for Job Corps Centers is $8.8 million, with the funding ranging from $5 million to $44 million. This fact substantiates the commenters' claim that after being awarded one contract, almost all Job Corps Center small business contractors would no longer qualify for the follow-on contract or any Job Corps Center requirement that would be set-aside for small businesses. In addition, if the size standard remained at $6 million, the DOL would be reluctant to set aside any Job Corps Center contract because of the continual turnover of small business contractors. The SBA is concerned that a viable size standard for Job Corps Centers must address a situation in which a small business obtaining a single contract quickly outgrows the size standard without being sufficiently ready to compete with larger businesses. The size standard needs to be at a level that

enables a small business to grow to a size to be competitive with other businesses in the industry. Most of the comments supported the position that a $30 million size standard achieves this result.

Comment Recommending an Alternative Size Standard Between $12 Million and $15 Million

One commenter agreed that the $6 million size standard warranted a change, but believed that increasing the size standard to $30 million was unrealistic. The commenter proposed that the size standard be increased to a level between $12 million and $15 million. The commenter believed the DOL will not seriously consider the commenter's business in competition with companies whose financial earnings are far closer to $30 million. The commenter argued that once a small business has obtained and operated a Job Corps Center for 3 or more years, it should be well situated to compete with other operators in procuring additional Job Corps Center contracts. The commenter also stated that a $30 million size standard would allow larger businesses to ''grab'' business intended for new and developing companies. The commenter believed a size standard between $12 million and $15 million is sufficient to allow small businesses to develop economies of scale in their operations that improve efficiencies in internal operations as well as decrease the costs associated with managing a contract. This size standard range would also help small businesses contend with the financing requirements set by the DOL because ''as the small business increases in size its ability to secure financing—for larger amounts and at lower rates—increases.''

The SBA does not agree with this comment. The SBA agrees with the position of many of the other commenters that the proposed $30 million size standard will make businesses more competitive by enabling them to achieve economies of scale associated with operating two to three Job Corps Centers. The DOL's experience with the $20 million size standard that it used before the OHA decision mentioned earlier, resulted in only a limited number of small business Job Corps Center contractors, none of which operate more than one center. The SBA believes that a size standard that is less than the previously used $20 million sized standard is inadequate for developing small businesses in the Job Corps Center sub-industry.

The SBA does not agree that the proposed size standard will substantially impact other small businesses ability to compete for Job Corps Center contracts. As discussed in the proposed rule, 87 percent of Job Corp Center contract dollars go to businesses over $30 million, with only two to four businesses falling within the range between $15 million and $30 million. The increased competition from a relatively few number of businesses between $15 million and $30 million is unlikely to diminish opportunities from other small businesses. Moreover, as other commenters have noted, businesses with less than $30 million in size have competitive disadvantages in terms of economics of scale and financial requirements set by the DOL.

Comments Opposing a Change in the Job Corps Center Size Standard

One commenter opposed any change to the current size standard on the ground that having one center run by one contractor constituted contract bundling. This commenter claimed that ''the DOL for 30 years has preferred to operate each of its contract-operated Job Corps Centers under one umbrella bundled contract.'' According to the commenter, by adopting the proposed size standard the SBA and the DOL are denying small businesses in the areas of facilities support, office administration, security guard services, janitorial services, landscaping services, medical and dental care, and food services from participating as Job Corps Center prime contractors.

The SBA does not agree with this commenter. Bundling is the consolidation of two or more contracts into a single procurement that will likely preclude small business participation. Here, the nature of the Job Corps Center contracts do not constitute contract bundling because they were not previously performed under separate smaller contracts and small businesses are not precluded from competing on these contracts. Bundling would occur for example, if the DOL issued one nationwide contract to manage the Job Corps Centers. A contract of that nature and scope would render small business participation unlikely. Additionally, issues concerning contract bundling relate to the structuring of individual procurements and therefore are separate from the SBA's determination of the appropriate small business size standard for a particular industry. For more information about the SBA's efforts to address the impact of contract bundling on small businesses, see its recently proposed rule on this issue (68 FR 5134, dated January 31, 2003.)

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This rule also is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry (67 FR 70330, dated November 22, 2002). Based on that analysis, the SBA believes that a $30 million size standard for Job Corps Centers is needed to better define small businesses engaged in these activities.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, approximately 10 additional businesses will obtain small business status and become eligible for these programs. These include Federal procurement

preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone). The 10 additional businesses may also become eligible for the SBA's financial assistance programs. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA's size standards for their programs for a variety of regulatory and program purposes. The SBA does not have information on each of these uses sufficient to evaluate the impact of the size standard change. If an agency believes that a different size standard is appropriate for its programs, it must contact the SBA. If an agency is seeking to change size standards in a general rulemaking context, then the agency should contact the SBA's Office of Size Standards (13 CFR 121.901–904). If the agency is seeking to change size standards for the purposes of a regulatory flexibility analysis, then the SBA's Office of Advocacy should be contacted pursuant to section 601(3) of the Regulatory Flexibility Act (RFA). Section 601(3) of the RFA requires the agency to consult with the Office of Advocacy and provide an opportunity for public comment when using a different size standard for the RFA analysis.

The benefits of a size standard increase to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the adopted size standard and use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the adopted size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses may benefit from the SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. Under this program, the SBA estimates that $700,000 in new Federal loan guarantees could be made to the newly defined small businesses. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard to include 10 additional businesses may result in only one or two small business guaranteed loans to businesses in this industry. As a guaranteed loan for larger businesses averages $350,000 for businesses in the Other Technical and Trade Schools industry and the Facilities Support Services industry, if two of the 10 business applied for a loan, the SBA could expect to guarantee an additional $700,000 in loans. However, most businesses involved in Job Corps Centers are in other industries; thus, their eligibility for SBA loan assistance may be under their primary NAICS industry. The newly defined small businesses would also benefit from the SBA's Economic Injury Disaster Loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

The SBA estimates that businesses gaining small business status could potentially obtain Federal contracts worth $53 million per year under the small business set-aside program, the 8(a) and HUBZone programs, or unrestricted contracts. Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and lower the prices on set-aside procurements. A larger base of small businesses may create an incentive for Federal agencies to set aside more procurements, thus creating greater opportunities for all small businesses. Federal contractors with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that approximately 10 additional businesses could become active in Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional businesses seeking assistance of the SBA's guaranteed lending programs, and additional businesses eligible for enrollment in the SBA's PRO-Net small business database. Among businesses in this group seeking the SBA's assistance, there will be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. With greater numbers of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. However, the additional costs associated with fewer bidders are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a), and HUBZone programs only if awards are expected to be made at fair and reasonable prices. In addition, the use of small business set-asides may encourage more competitors since small businesses would not have to compete against the major businesses in the industry.

The new size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to SDB or HUBZone businesses instead of large businesses since those two categories of small businesses are eligible for price evaluation preferences for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. As currently there is only one small business that has a contract for a Job Corps Center, this transfer will be offset by initiating a number of Federal procurements than can now be set aside for all small businesses. The potential transfer of contracts away from large and currently defined small businesses would be limited by the number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government. The potential distributional impacts of these transfers could result in up to $53 million, or 5.8 percent of total contract dollars of $909 million, being transferred from large businesses to small businesses. The SBA

based this estimate on the per year funding of the businesses that currently have Job Corps Center contracts, which would gain small business status as a result of this rule.

The revision to the current size standard for Job Corps Centers is consistent with the SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the RFA, this rule may have a significant impact on a substantial number of small entities engaged in Job Corps Center activities. Immediately below, the SBA sets forth a Final Regulatory Flexibility Analysis (FRFA) of this rule addressing the following: (1) The reasons and objective of the rule; (2) a description and estimate of small entities to which the rule will apply; (3) the projected reporting, record keeping, and other compliance requirements of the rule; (4) the relevant Federal rules which may duplicate, overlap or conflict with the rule; and (5) alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. However, this rule is limited to a specific type of contract only issued by the DOL. In cases where an SBA size standard is not appropriate, the Small Business Act and the SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with the SBA's Office of Advocacy when developing different size standards for their programs. (13 CFR 121.902(b)(4)).

(1) What Is the Need for and Objective of the Rule?

The objective of this rule is to establish an appropriate small business definition of businesses operating Job Corps Centers, and therefore, eligible for Federal small business assistance programs. An increase to the current $6 million size standard is needed to provide contracting opportunities to the small business segment of businesses engaged in or competing for Job Corps Center contracts. Currently, there are five businesses in the Job Corps Centers activity that have revenues below the current $6 million size standard; however, only one of these businesses has a contract to operate a Job Corps Center. This business is likely to outgrow the current size standard within the next year as its current contract is for $5.8 million per year. This will leave only four businesses below the size standard, all having revenues below $1 million. None of these businesses have been successful in winning a Job Corps Center contract. This, along with the fact that the average yearly contract funding is $8.8 million and the minimal funding for a Job Corps Center is $5 million, indicates that the size standard for Job Corps Centers needs to be greater than the current $6 million.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)?

The SBA received no comments in response to the IRFA of the proposed rule.

(3) What Is the SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

The SBA estimates that 35 organizations are engaged in the Job Corps Center activity, of which approximately 14 percent are small businesses currently at or just below the $6 million in size. With this rule, 10 additional businesses will gain small business status. These businesses will be eligible to seek available SBA assistance provided that they meet other program requirements.

Based on the relative size of these businesses and the amount of Job Corps Center contracting, the SBA estimates that small business coverage will increase by $53 million, or 5.8 percent of total contracting in this activity. The SBA based this estimate on the per year funding of the businesses that currently have Job Corps Center contracts and that will gain small business status with this rule.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping Requirements on Small Businesses?

A new size standard does not impose any additional reporting, record keeping or other compliance requirements on small entities for the SBA's programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determine ''voluntary'' access to the SBA and other Federal programs that assist small businesses, but do not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this final rule are (1) eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in a HUBZone; and (2) eligibility for the SBA's financial assistance programs such as 7(a), 504 business loans, and Economic Injury Disaster Loan assistance. The SBA estimates that businesses gaining small business status could potentially obtain Federal contracts worth $53 million per year under the small business set-aside program, the 8(a) program, the HUBZone program, or unrestricted contracts. This represents approximately 5.8 percent of the $909 million in total Federal expenditures for Job Corps Centers.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act, 15 U.S.C. 632 and 13 CFR part 121, the SBA establishes size standards based on industry characteristics and for non-

manufacturing concerns on the basis of gross receipts of a business concern over a period of 3 years. The facts that the average yearly funding for a Job Corps Center is $8.8 million, with funding ranging from $5 million to $44 million, and that there are only five businesses in this activity with revenues under the current size standard support establishing a separate size standard of $30 million.

(b) What Alternatives Did the SBA Reject?

One commenter recommended a size standard between $12 million and $15 million size standard. He believed that once a business obtained and operated a Job Corps Center for 3 or more years, it should be well situated to compete with other Job Corps Centers operators. A $12 million to $15 million size standard will allow small businesses to develop economies of scale in their operations that improve efficiencies in internal operations as well as decrease the costs associated with managing a contract.

The SBA does not consider this a viable alternative. This recommendation is less than the $20 million used by the DOL prior to the OHA decision mentioned above. The receipts distribution shows that 87 percent of the Job Corps Center contract dollars go to businesses with over $30 million in revenues. If a $15 million size standard were adopted, a business that won a second Job Corps Center contract would probably exceed the size standard within a year of work on that contract.

By establishing the size standard at $30 million, the SBA will create opportunities for the small businesses in an industry where only five businesses are below the size standard. Of these five businesses, four have revenues below $1 million, with only one of these businesses having a Job Corps Center contract. If the SBA retains the current $6 million size standard, it will not accurately reflect the smaller segment of businesses that participate in operating and maintaining Job Corps Centers.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

For the reasons stated in the preamble, amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

§ 121.201 [Amended]

2. Amend § 121.201 as follows:

a. In the table ''Small Business Size Standards by NAICS Industry'' under the heading ''Subsector 611—Educational Services,'' revise entry 611519 to read as follows; and

b. Add footnote 16 to the end of the table to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	* * * * * * *		
	Subsector 611—Educational Services		
	* * * * * * *		
611519	Other Technical and Trade Schools	$6.0	
EXCEPT	Job Corps Centers[16]	[16]$30.0	
	* * * * * * *		

[16] *NAICS codes 611519*—Job Corps Centers. For classifying a Federal procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Center. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.

Dated: March 14, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–6769 Filed 3–20–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14595; Airspace Docket No. 03–ACE–18]

Modification of Class E Airspace; Emmetsburg, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Emmetsburg, IA. An examination of controlled airspace for Emmetsburg, IA revealed discrepancies in the Emmetsburg Municipal Airport, IA airport reference points used in the legal description for the Emmetsburg, IA Class E airspace area. This action corrects the discrepancies by modifying the Emmetsburg, IA Class E airspace area. It also incorporates the revised

Emmetsburg Municipal Airport, IA airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14595/ Airspace Docket No. 03–ACE–18, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Emmetsburg, IA. An examination of controlled airspace for Emmetsburg, IA revealed discrepancies in the Emmetsburg Municipal Airport, IA airport reference point used in the legal descriptions for this airspace area. This amendment incorporates the revised Emmetsburg Municipal Airport, IA airport reference point and brings the legal description of the Emmetsburg, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14595/Airspace Docket No. 03–ACE–18.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Emmetsburg, IA

Emmetsburg Municipal Airport, IA
(Lat. 43°06′07″ N., long. 94°42′17″ W.)
Emmetsburg NDB
(Lat. 43°06′04″ N., long. 94°42′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Emmetsburg Municipal Airport and within 2.6 miles each side of the 128° bearing from the Emmetsburg NDB extending from the 6.5-mile radius to 7.4 miles southeast of the airport and within 2.5 miles each side of the 324° bearing from the Emmetsburg NDB extending from the 6.5-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on March 11, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–6750 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–024; Order No. 587–R]

Standards for Business Practices of Interstate Natural Gas Pipelines

March 12, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations governing standards for conducting business practices with interstate natural gas pipelines. The Commission is incorporating by reference the most recent version of the standards, Version 1.6, promulgated July 31, 2002, by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) and the WGQ standards governing partial day recalls (recommendations R02002 and R02002–2), adopted October 31, 2002. These standards can be obtained from NAESB at 1100 Louisiana, Suite 3625, Houston TX 77002, 713–356–0060, *http://www.naesb.org.*

DATES: The rule will become effective April 21, 2003. Pipelines must file tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–8685.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–8292.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–6507.

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is adopting the most recent version, Version 1.6, of the consensus standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB), and the WGQ standards governing partial day recalls. This rule will benefit the public by adopting the most recent and up-to-date standards governing business practices and electronic communication and by providing shippers with enhanced flexibility to recall released capacity.

Background

2. Since 1996, in the Order No. 587 series,[1] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by the WGQ (formerly the Gas Industry Standards Board or GISB), a private consensus standards developer composed of members from all segments of the natural gas industry. The WGQ is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. On October 7, 2002, the WGQ filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.6. The WGQ reports that while Version 1.5 contained many of the standards designed to support Order No. 637,[2] Version 1.6 includes additional standards that support Order No. 637. It states: ''development of standards to support FERC Order No. 637 was given the highest priority by all NAESB subcommittees and task forces.'' The WGQ further reports that the surety assessment performed by the Sandia National Laboratories on the GISB EDM (Electronic Delivery Mechanism) standards was accepted by GISB and forwarded to the EDM Subcommittee for review and development of standards in October 2000. It states that some of the Sandia recommendations were implemented in Version 1.5, and the remainder were implemented in Version 1.6. Finally, the WGQ reports that work continues on requests for both new and revised business practices, information requirements, code value assignments, technical implementation and mapping or interpretations.

4. In Order No. 587–N,[3] the Commission adopted a regulation requiring that pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at any of the nomination opportunities provided by the pipelines. The Commission established a two-phased implementation for this regulation. In the first phase, the Commission established an interim schedule under which releasing shippers could recall capacity, as long as the recall did not involve a partial or flowing day recall (a recall of scheduled gas after the gas begins to flow). Pipelines implemented the first phase as of July 1, 2002. In the second phase, the Commission asked the WGQ within six months to develop standards dealing with the operational details of permitting partial or flowing day recalls, in particular the method by which capacity would be allocated between releasing and replacement shippers. The Commission established October 1, 2002, as the date by which the WGQ and other industry members should submit a report and further provided for reply comments to be filed by October 15, 2002.

5. On October 2, 2002, the WGQ filed a report stating that its Executive Committee had adopted standards governing partial or flowing day recalls in Recommendations R02002 and R02002–2. The WGQ membership ratified these standards on October 31, 2002.

6. On November 29, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR)[4] that proposed to adopt Version 1.6 of the WGQ standards and the partial or

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,114 (Dec. 11, 2000); Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002), Order No. 587–O, 67 FR 30788 (May 8, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,129 (May 1, 2002).

[2] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,091 (Feb. 9, 2000).

[3] Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002).

[4] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking (NOPR), 67 FR 72870 (Dec. 9, 2002), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,566 (Nov. 29, 2002).

flowing day recall standards. Five comments [5] and one reply comment [6] were filed. The comments generally support adoption of the standards, although some comments raise questions about the timing of implementation.

Discussion

7. The Commission is incorporating by reference Version 1.6 of the WGQ's consensus standards and the standards adopted for partial day recalls.[7] Pipelines will be required to file tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003, which is the first day of the month following 90 days after the issuance of this rule.

8. The adoption of Version 1.6 of the WGQ standards [8] will help continue the process of implementing Order No. 637 and will update and improve the current standards.[9] Adoption of the partial day recall standards [10] will provide shippers with enhanced flexibility to recall capacity, while ensuring that replacement shippers receive notice sufficient to allow them to reschedule their capacity. The partial day recall standards also address the method for determining how capacity will be allocated among releasing and replacement shippers when capacity is recalled during the gas day. Among the most notable of these standards are: A revision to the capacity release timeline to permit prearranged non-biddable releases on non-Business as well as Business days (Standard 5.3.2); a revision to the Commission's interim timeline for recall transactions to permit recalls at any of the four nomination opportunities, while still providing sufficient notice to replacement shippers to enable them to reschedule their capacity (Standard 5.3.z1); the adoption of procedures governing notice to replacement shippers (Standards 5.3.z2 through 5.3.z4); and the use of elapsed prorata capacity as the allocation method for flowing day recalls, unless a different method is necessary to reflect the nature of the pipeline's tariff, services, or operational characteristics (Standard 5.3.z13).[11]

9. The WGQ approved the standards under its consensus procedures.[12] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like the WGQ, as means to carry out policy objectives or activities.[13]

10. The comments addressing various aspects of the standards will be addressed below.

A. Implementation Date

11. The Commission had proposed that pipelines implement the new standards three months after issuance of a final rule. INGAA, Duke, Dominion, and Williston maintain that the Commission should establish the implementation date on the first day of the month, 90 days after the issuance of the rule. First-of-the-month implementation, they maintain, will provide for a more efficient transition for accounting and nomination systems and avoids middle-of-the-month billing period changes. The Commission agrees, and is requiring implementation on the first of the month, following 90 days after issuance of this final rule.

B. Implementation Date for Partial Day Recall Standards

12. INGAA, Duke, and Williston argue that the Commission should delay implementation of the partial day recall standards until these standards are formally adopted in Version 1.7 of the WGQ standards. INGAA, Duke, and Williston all maintain that the standards already adopted are not complete, citing to certain examples of using elapsed prorated capacity that have not yet been approved by the NAESB membership. They argue that the Commission should not adopt these standards until they are complete. These three commenters also raise procedural issues with respect to adoption of the standards. INGAA maintains that the partial day recall standards are not numbered and could confuse pipeline customers who rely on the NAESB standards numbering system and implementation guide. Duke and Williston argue that without officially assigned numbers, pipelines will not be able to incorporate the standards by reference in their tariffs. Williston maintains that since the partial day recall standards are not published, parties who are not members of NAESB will not be able to obtain copies.

13. KeySpan opposes any delay in implementing the partial day recall standards. It argues procedural problems, such as the absence of officially assigned numbers, should not deprive shippers of the benefits of using partial day recalls. It further argues that all NAESB standards evolve over time, and that is not a justification for delaying implementation of these standards.

14. The Commission will not delay implementation of the partial day recall standards. NAESB developed these standards as a result of the Commission's March 12, 2002, determination in Order No. 587–N that permitting such recalls is necessary to improve the capacity release marketplace by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs, by providing greater incentives for releasing shippers to release capacity, and by fostering greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and pipeline interruptible

[5] Those filing comments are: American Gas Association (AGA), Dominion Resources, Inc. (Dominion), Duke Energy Gas Transmission Corporation (Duke), Interstate Natural Gas Association of America (INGAA), Williston Basin Interstate Pipeline Company (Williston).

[6] The reply comment was filed by KeySpan Delivery Companies.

[7] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.6 and the partial day recall standards are available from NAESB. 5 U.S.C. 552(a)(1); 1 CFR 51 (2001).

[8] In Version 1.6, the WGQ made the following changes to its standards. It revised Standards 1.3.63, 4.3.4, 4.3.6, 4.3.8, 4.3.10, 4.3.15, 4.3.21, 4.3.23, 4.3.61, 4.3.70, and 4.3.83, and Data Sets 1.4.6, 5.4.1 through 5.4.4, 5.4.7, 5.4.8, 5.4.9, 5.4.13, 5.4.14, 5.4.15, 5.4.18, and 5.4.19. It added Principle 4.1.39, Standard 4.3.88, and Data Sets 5.4.20, 5.4.21, and 5.4.22. It deleted Principles 4.1.1 and 4.1.11.

[9] The Commission also is incorporating by reference Standards 2.3.29 and 2.3.30 (dealing with operational balancing agreements and imbalance netting and trading, respectively) which in previous versions, the Commission had not incorporated because the standards conflicted with the Commission's regulations in these areas. 18 CFR 284.12(b)(2)(i)&(ii). The WGQ has amended these standards so they no longer conflict with the Commission regulations.

[10] In the partial day recall standards, the WGQ made the following changes to its standards. It revised Standards 5.3.2, 5.3.7, 5.3.41, and 5.3.42, and Data Sets 1.4.4, 5.4.1, 5.4.3, 5.4.4, 5.4.7, and 5.4.9. It added Principles 5.1.z1, 5.1.z2, and 5.1.z3, Definition 5.2.z1, and Standards 5.3.z1 through 5.3.z15. It deleted Standard 5.3.6.

[11] Elapsed prorata capacity means the portion of the capacity that would have theoretically been available for use prior to the effective time of the intraday recall based on a cumulative uniform hourly use of the capacity. Definition 5.2.z1.

[12] This process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of the WGQ's general membership must ratify the standards.

[13] Pub L. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

service.[14] The standards already adopted by the WGQ constitute an integrated, consistent, and reasonably complete set of standards governing partial day recalls. Like other standards, these standards too may be improved over time, but the potential for such improvement need not delay implementation and deprive shippers of the immediate benefits of using these standards. Waiting to approve these standards until the Commission incorporates Version 1.7 of the standards could result in unnecessarily deferring the benefits of these standards for upwards of a year. Moreover, if the WGQ's membership does approve the examples of elapsed prorated capacity, pipelines can rely on these examples in administering the standards.

15. The Commission also finds no procedural reason to delay adoption of the standards. The set of adopted standards are readily identified by their Recommendation numbers (R02002 and R02002–2), are available from NAESB, and are posted on the Final Actions portion of NAESB's Web site.[15] Each of the new standards is also identified by a discrete number using a ''z'' as a placeholder, such as 3.3.z2. Pipelines can therefore incorporate these standards by reference by identifying the number of the standard and indicating that it was adopted by Recommendation R02002 or R02002–2, as appropriate.

C. Capacity Release Timeline (Standard 5.3.2)

16. Standard 5.3.2 establishes the timeline applicable to capacity release transactions. In Version 1.6 of the standards, Standard 5.3.2 would provide that all capacity release transactions take place on a ''Business Day.'' However, in the partial day recall standards (R02002), the WGQ revised this standard so that pre-arranged capacity release transactions could take place on any day; only biddable transactions would be limited to Business Days.

17. Dominion (supported by KeySpan) contends that, despite this change, Standard 5.3.2 is overly restrictive because biddable releases (those of more than 31 days or at discounts) still cannot be conducted on weekends or holidays. It argues that shippers that need capacity on those days will be forced to buy from the pipeline. It further argues that pipelines have the resources to process capacity release transactions on weekends and holidays.

18. The industry segments have reached consensus agreement on the timeline for conducting capacity release transactions, and the Commission will not modify this agreement based on the comments of two parties. What the Commission said in Order No. 587 regarding the need for unanimity on standards is equally applicable here:

> While these standards represent a broad consensus of the industry, the Commission recognizes that not every standard commands universal support. In a democratic society, unanimity on matters of common concern is neither expected nor necessary. Standardization, by definition, requires accommodation of varying interests and needs, and rarely can there be a perfect standard satisfactory to all.[16]

Moreover, there is a reasonable basis for the industry to conclude that bidding should take place on Business Days, and not on weekends and holidays. This requirement limits the need for additional pipeline personnel to process released transactions on a weekend. But, more importantly, the WGQ could reasonably find that requiring bidding during the business week would better ensure that all members of the industry have a reasonable opportunity to bid on capacity release postings. Posting long-term pre-arranged releases for bidding on a weekend, for instance, could limit the scrutiny of such releases and the ability of other shippers to offer competitive bids.

19. While Dominion recognizes that shippers are able to enter into short-term pre-arranged releases (not subject to bidding) on weekends and holidays, it maintains that shippers seeking longer-term releases subject to bidding (more than 31 days, but less than one year, at less than maximum rates) will not be able to obtain released capacity on weekends and holidays, but will be forced to rely on capacity from the pipeline for those days.

20. The standards do not preclude shippers from acquiring released capacity on weekends or holidays. Under the standards, shippers needing capacity on weekends or holidays can acquire released capacity by entering into pre-arranged, short-term capacity release transactions on a weekend.[17] If the releasing shipper and replacement shipper seek a longer term transaction that is subject to bidding (as Dominion posits), they can enter into a pre-arranged releases to cover the weekend or holiday and then post the longer-term release on the next business day, so other shippers have an opportunity to bid for that capacity. The standards therefore do not make shippers dependent on obtaining pipeline capacity for weekends and holidays, while at the same time they ensure that long-term biddable transactions will be posted on business days when all shippers will have an opportunity to bid for the capacity.

D. Mechanisms for Allocating Partial Day Release Quantities

21. Standard 5.3.z13 (R02002) states:

> In the event of an intra-day capacity recall, the Transportation Service Provider (TSP) should determine the allocation of capacity between the Releasing Shipper and the Replacement Shipper(s) based upon the Elapsed Prorata Capacity (EPC). Variations to the use of EPC may be necessary to reflect the nature of the TSP's tariff, services, and/or operational characteristics.

In the NOPR, the Commission also proposed that the determination of reservation charges and credits and the potential liability for contract overruns should follow the allocation of capacity. The Commission stated that ''it sees no reason in this instance for pipelines to propose individual allocation methodologies.'' [18]

22. Duke seeks clarification that the Commission's statement that it saw is no reason for pipelines to propose individual allocation methodologies will not preclude pipelines from following standard 5.3.z13 and proposing variations to the use of Elapsed Prorata Capacity when necessary to reflect the nature of the pipeline's tariff, services, and/or operational characteristics. Duke claims that the Elapsed Prorata Capacity does not fully address the needs of its pipelines.

23. As permitted by Standard 5.3.z13, pipelines may propose variations to the use of Elapsed Prorata Capacity to allocate capacity among releasing and replacement shippers after a recall if they can provide justification that such deviations are necessary to reflect specific services or operational characteristics on their systems and do not unduly limit the rights of

[14] Order No. 587–N, at P 21.

[15] *http://www.naesb.org/Final.htm.*

[16] Order No. 587, 61 FR, at 39057, FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,038, at 30,059.

[17] Data the Commission has downloaded from pipeline Web sites show that 90% of all capacity releases are pre-arranged deals. *See e.g., http://www.ferc.gov/gas/pl02–4/RawDataAboveCaps.xls* (93% of above cap deals March 25, 2000 are pre-arranged); Secondary Market Transactions on Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 41046 (Aug. 7, 1996), FERC Stats. & Regs. Proposed Regulations (1988–1998) ¶ 32,520, at 33,252–53) (July 31, 1996) (92% of transactions from 5/1/95–5/31/96 are pre-arranged).

[18] NOPR, at P 12.

shippers.[19] However, as the Commission stated in the NOPR, once such an allocation methodology is approved for each pipeline, the determination of reservation charges and credits and the potential liability for contract overruns should follow the allocation of capacity.

E. Provision of Contract Information on Releases

24. Standard 5.3.z1 (R02002) requires a releasing shipper recalling capacity to provide notice of recall to the pipeline and the first replacement shipper.[20] Dominion contends that for biddable transactions,[21] the releasing shipper will not have the information necessary to notify the first replacement shipper, and requests that the pipeline provide such contact information on the pipeline's Internet Web site.

25. While the current standards require pipelines to post the winning bidder's name and company code when they post capacity awards (Standard 5.4.3), it does not require the posting of contact information. The Commission agrees that for biddable deals subject to recall, pipelines need to make available to the releasing shipper information sufficient to enable it to contact the replacement shipper in the event of a capacity recall.

F. Standards Relating to Penalties

26. In comments on the WGQ's October 1, 2002, report on partial day recalls, Process Gas Consumers Group claimed that two standards (not included in this proceeding) on which the WGQ was working involved the allocation of penalties between releasing and replacement shippers as a result of partial day recalls, and requested that the Commission find that all penalty standards are beyond the scope of the WGQ. In the NOPR, the Commission stated that it would not rule the development of penalty standards beyond the scope of the WGQ, although the Commission explained that it ''is not asking the WGQ specifically to develop standards for penalties.'' [22] The Commission stated that the development of standards related to penalties can help reduce barriers to multi-pipeline shipments and improve the overall efficiency of the pipeline grid, and it encouraged the WGQ to examine seriously ''any such proposals that hold out the prospect of improving the efficiency of the pipeline grid.'' [23]

27. A number of comments contend that the WGQ should not standardize penalties. AGA, INGAA, Duke, and Dominion generally assert that penalties are rate matters that should not be standardized, and that penalties and terms relating to penalties may need to vary by pipeline to reflect differences between the pipeline's needs and markets. AGA, however, asserts that some standards relating to penalties are within the scope of the WGQ, such as standards governing the allocation of penalties between releasing and replacement shippers.

28. The Commission reiterates that it is not requesting the WGQ to consider or develop standards relating to penalties. But, the Commission also will not categorically determine that any proposal for a standard that relates to penalties is beyond the scope of the WGQ. In the first place, deciding whether a standard is beyond the WGQ's scope is a decision for the WGQ, not the Commission. As AGA notes, the WGQ is already considering standards that arguably relate to penalties, and the Commission sees no reason for it to interfere with the WGQ's determination of what proposals are within its scope. Moreover, the WGQ passed a series of standards that created a more uniform and systematic method for pipelines to receive reimbursement for fuel use,[24] even though such standards bear on the rates charged for fuel. The Commission finds no reason here to prohibit the WGQ from considering similar standards with respect to penalties that will create a more uniform and efficient system for assessing penalties.

G. Incorporation by Reference

29. Dominion takes issue with the Commission's incorporation by reference of the WGQ standards. Dominion asserts that the standards are not reasonably available as required by the **Federal Register**, because they are only available from NAESB after payment of significant fees. It further argues that neither the Commission nor the WGQ have clearly indicated where changes in standards have been made, so that the incorporation by reference does not make clear the conditions on which an entity will be bound. It requests (along with KeySpan) that the Commission direct NAESB to refile Version 1.6, and any future filings, with a redline comparison showing all changes from previous standards.

30. As the Commission has pointed out on several occasions, incorporation by reference is the appropriate, and indeed the required, method for adopting copyrighted standards material.[25] The Freedom of Information Act, and implementing regulations, establish that the proper method of adopting copyright material is to incorporate such material by reference upon approval by the Director of the Federal Register.[26] In fact, § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA) instructs federal agencies to use technical standards developed by voluntary consensus standards organizations, like the WGQ,[27] and such standards are to be incorporated by reference.[28] According to the Federal Register regulations, material is eligible for incorporation by reference if such material ''is * * * standards, specifications, * * * substantially reduces the volume of material published in the **Federal Register,** * * * and is reasonably available to and usable by the class of persons affected by the publication.[29]

31. The WGQ standards comply with these requirements: they are standards and specifications, their incorporation by reference is necessary since the standards cannot be reproduced and such incorporation would substantially limit the volume of material in the **Federal Register**, the standards are reasonably available from NAESB, and the standards can be readily used since the standard versions and all the standards are numbered. The Office of the **Federal Register** approved the

[19] *Cf.* Algonquin Gas Transmission Company, 100 FERC ¶ 61,274 (2002), *reh'g denied,* 102 FERC ¶ 61,149 (2003) (rejecting a proposal deviating from the standards when the proposal would have limited shippers' flexibility and was not necessary to protect the pipeline).

[20] The pipeline is also required to notify all replacement shippers affected by the recall one hour after the notification by the releasing shipper.

[21] Dominion recognizes, in any pre-arranged capacity release transaction, the releasing shipper will know the replacement shippers and will be aware of the necessary contact information.

[22] NOPR at P 13.

[23] NOPR at P 13.

[24] Standards 1.3.15–1.3.16 and 1.3.28–1.3.31.

[25] Order No. 587–A, 61 FR 55208, 77 FERC ¶ 61,061, at 61,232 (1996); Order No. 587–K, 64 FR 17277, FERC Stats. & Regs. Regulations Preambles (July 1996–December 2000) ¶ 31,072, at 30,775 (1999).

[26] 5 U.S.C. 552(a)(1) (for the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register); 1 CFR 51,7(4). Indeed, the Commission could not reproduce the WGQ standards in violation of the NAESB copyright. *See* 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).

[27] Pub. L. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[28] *See* Federal Participation in the Development and Use of Voluntary Standards, OMB Circular A–119, at 6 (a)(1) (Feb. 10, 1998), *http://www.whitehouse.gov/omb/circulars/a119/a119.html* (''Use'' means incorporation of a standard in whole, in part, or by reference for procurement purposes, and the inclusion of a standard in whole, in part, or by reference in regulation(s)).

[29] 1 CFR 51.7 (a)(2)–(4).

incorporation by reference pursuant to these guidelines.

32. Dominion argues that the WGQ standards should not be found reasonably available, because they are available only to non-members paying ''required, *significant* fees'' (emphasis added). Neither the Freedom of Information Act, nor the regulations, require that standards be available at no charge. In fact, standards incorporated by reference are exempt from the requirement that any agency provide copies of documents according to its fee schedule.[30] Moreover, Dominion's use of the adjective ''significant'' is inappropriate hyperbole. NAESB charges non-members an everyday low price of only $25 to obtain the booklet including all the business practice standards.[31] Computer afficionados can obtain the booklet containing the datasets for an additional $25, and true computerphiles can obtain the SINGLE–CD ROM collection of the entire set of standards, including the Electronic Data Interchange requirements, at the new substantially reduced price of $100.[32] If Dominion truly considers these prices ''significant,'' [33] it can view copies of the standards at the Commission at no charge. Thus, by any stretch of language, the WGQ standards are ''reasonably available to the class of persons affected by the publication.'' [34]

33. Dominion further contends that the WGQ standards do not meet the requirement that the language incorporating the standards be as precise and complete as possible and that each incorporation by reference shall include an identification and subject description of the matter incorporated, in terms as precise and useful as practicable within the limits of reasonable brevity.[35] Dominion maintains that the incorporation by reference does not meet these criteria because the Commission has not sufficiently identified which standards have changed when the WGQ publishes a new edition of the standards. Dominion asserts, for example, that in Version 1.5 of the standards, the WGQ added the term ''Business Day'' to the capacity release standards, but that this significant change was not highlighted by the Commission. Dominion further asserts that the Natural Gas Act requirements go beyond those of the Federal Register because they require the Commission to provide notice of the filing of new rate schedules. Dominion contends that the Commission should not adopt Version 1.6 of the standards until NAESB refiles the standards with ''redlined'' sheets showing all changes from the previous version.

34. The Federal Register regulations do not require the provision of notice of revised or modified standards, only that the incorporation by reference indicate the material to be incorporated with specificity. The regulations provide only that ''the language incorporating a publication by reference shall be as precise and complete as possible;'' and states ''language incorporating a publication by reference is precise and complete if it * * * uses the words ''incorporated by reference;'' * * * states the title, date, edition, author, publisher, and identification number of the publication; * * * informs the user that the incorporated publication is a requirement; * * * makes an official showing that the publication is in fact available by stating where and how copies may be examined and readily obtained with maximum convenience to the user; and * * * refers to 5 U.S.C. 552(a).[36] The Commission regulations comply with these requirements.

35. Further, although not required by the regulations, the Commission endeavors in each NOPR to provide a listing of all the standards that have been revised, added, and deleted.[37] The WGQ too includes in each Standards publication a Version Cross-Reference listing for each standard, the Version in which it was adopted, revised, and interpreted. In the WGQ's filings with the Commission, the WGQ also includes a List of New Standards, Standards Modifications, and Interpretations for the new Version.[38] In fact, with respect to the change to Business Day in Standard 5.3.2 of Version 1.5 about which Dominion complains, the Commission not only included Standard 5.3.2 among the list of standards revised,[39] but specifically referenced the change to ''Business Day'' twice in the text of the Preamble.[40] Thus, Dominion and all other users of the standards have sufficient notice of revisions of changes to the standards.

36. Dominion further argues the Commission's incorporation by reference is at odds with the requirement of the Natural Gas Act to provide notice of filings by natural gas companies. The Commission has the ability to act through notice and comment rulemaking proceedings that comply with the Administrative Procedure Act.[41] Here, the Commission complied with the requirements of the Administrative Procedure Act, the Freedom of Information Act, and the National Technology Transfer and Advancement Act in incorporating the WGQ standards by reference. The listing of added, revised, and deleted standards in the Preamble to the NOPR was sufficient to alert parties to substance of the proposed rule and the subjects and issues involved.[42]

37. The requirement for providing notice of a filing in section 4 of the NGA applies only to filings by natural gas companies, and since NAESB is not a natural gas company, the Commission cannot compel it to file its standards with the Commission or provide a specific form of public notice. However, even if the notice requirement did apply, the statute requires only notice of the filing of new rate schedules, not detailed descriptions of all changes to prior rate schedules or the redlined comparisons requested by Dominion.[43] The Commission's disclosure of the added, modified, or deleted standards is sufficient notice for parties to review the standards. Although the Commission, in addition, often tries to highlight what it thinks are important changes to the

[30] 5 U.S.C. 553(a)(3).

[31] NAESB Order Form, *http://www.naesb.org/pdf/ordrform.pdf.* (Feb. 13, 2003). If the Commission were to charge its standard rate for copying of $.20/page, the cost for Version 1.6 would be virtually identical to NAESB's charge, $24 for the booklet (120 pages times $.20). 18 CFR 388.109.

[32] The paper-only version of the standards, including the EDI requirements, used to cost $2000. *See* Order No. 587–A, 61 FR, at 55213, 77 FERC, at 61,232.

[33] Although $25 would appear eminently affordable for a company that reported operating revenue of $2.545 billion for the three month period ending September 30, 2002. Dominion Resources, Inc. Form 10–Q (for the quarterly period ended September 30, 2002). *http://www.sec.gov/Archives/edgar/data/715957/000071595702000143/0000715957–02–000143-index.htm.*

[34] Given the class of persons affected by these standards, Dominion's complaint could probably be dismissed under the doctrine of *de minimis* non curat lex.

[35] Dominion cites to 1 CFR 51.6. But this section does not appear in the 2002 edition of the CFR.

[36] 1 CFR 51.9(a)(b).

[37] *See* Notice of Proposed Rulemaking, 67 FR 72870, IV FERC Stats. & Regs. Proposed Regulations ¶ 32.566, at P 8 n.5 (Proposed adoption of Version 1.6).

[38] *See* Report of the North American Energy Standards Board, Docket No. RM96–1 (filed 10/7/2002).

[39] *See* Notice of Proposed Rulemaking, 67 FR 44 (Jan. 2, 2002), IV FERC Stats. & Regs. Proposed Regulations ¶32,557 (Dec. 20, 2001), at P 8 n.7 (Proposed adotion of Version 1.5).

[40] Notice of Proposed Rulemaking, 67 FR 44, IV FERC Stats. & Regs. Proposed Regulations ¶ 32,557, at P 15, 16.

[41] *Wisconsin Gas Co.* v. *FERC,* 770 F.2d 1144, 1167 (DC Cir. 1985).

[42] 5 U.S.C. 553(b)(3).

[43] The requirement to file redlined comparisons, cited by Dominion, is not a statutory requirement under the NGA, but is a Commission regulatory requirement applying only to tariff filings by natural gas companies. 18 CFR 154.201(a). Since NAESB is not a natural gas company and is not making a tariff filing, this regulation would not apply to it, even if the notice requirements of section 4 of the NGA were deemed to apply in this situation.

standards, the Commission cannot, and is not responsible for trying to, anticipate the changes Dominion or other parties may find of particular interest. As the Commission has stated, ''the purpose of the Notice of Filing is to apprise the public of the fact that a filing has been made * * * after that, the burden is upon interested parties to inform themselves of the filing's precise contents.'' [44]

Notice of Use of Voluntary Consensus Standards

38. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this rulemaking, the Commission is incorporating by reference voluntary consensus standards developed by the WGQ.

Information Collection Statement

39. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

40. The final rule will affect the following existing data collection: FERC–549C ''Standards for Business Practices of Interstate Natural Gas Pipelines'' (OMB Control No. 1902–174). The following burden estimates are related only to this rule and include the costs of complying with Version 1.6 of the WGQ's consensus standards and the standards adopted by the WGQ for partial day recalls. The burden estimates for the FERC–549C data collection are related to implementing the latest version of the business practice standards and related data sets. The costs for this data collection are primarily related to start-up and will not be on-going costs.

Data collection	Number of respondents	Number of respondent per respondent	Hours per response	Total annual hours
FERC–549C	93	1	2,248	209,064

The total annual hours for collection is 209.064 hours.

	FERC–549C
Annualized Capital/Start-up Costs	$11,763,971
Annualized Costs (Operations & Maintenance)	0
Total Annualized Costs	11,763,971

The cost per respondent is $126,494 (rounded off).

41. The Commission sought comments to comply with these requirements. Comments were received from six entities. No comments addressed the reporting burden imposed by these requirements. The substantive issues raised by the commenters are addressed in this preamble.

42. The Commission's regulations adopted in this rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communication of interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and communication protocols to conform to the latest version, Version 1.6, of the WGQ's consensus standards and to include the standards adopted by the WGQ for partial day recalls.

43. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this final rule will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

44. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, CI–1, (202) 502–8415, or *michael.miller@ferc.gov*) or the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, DC 20503. The Desk Officer can also be reached at (202) 395–7856, or fax: (202) 395–7285.

Environmental Analysis

45. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[45] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[46] The actions adopted here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[47] Therefore, an environmental assessment is unnecessary and has not been prepared.

Regulatory Flexibility Act Certification

46. The Regulatory Flexibility Act of 1980 (RFA) [48] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

[44] PJM Interconnection L.L.C, 101 FERC ¶ 61,135, P 17 (2002). *See* Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, FERC Stats. & Regs., Regulations Preambles (Jan. 1991-June 1996) ¶ 31,025, at 31,403 (The purpose of the notice is merely to get the attention of interested parties who may then review the full filing.)

[45] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30.783 (1987).

[46] 18 CFR 380.4.

[47] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[48] 5 U.S.C. 601–612.

Accordingly, pursuant to 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

Document Availability

47. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

48. From FERC's home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

49. User assistance is available for FERRIS and the FERC's Web site during normal business hours from FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Implementation Dates and Procedures

50. Pipelines are required to file tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003. Pipelines incorporating the Version 1.6 standards into their tariffs must include the standard number and Version 1.6. Pipelines incorporating by reference the partial day recall standards must refer to the standard number (*e.g.,* 3.3.z2) and the Recommendation number (R02002 and R02002–2) in which the standard is adopted.

Effective Date

51. These regulations are effective April 21, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends part 284, chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended by revising paragraphs (a)(1)(i), (ii), (iii), (iv) and (v), to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.6, July 31, 2002) and the standards contained in Recommendation R02002 (October 31, 2002);

(ii) Flowing Gas Related Standards (Version 1.6, July 31, 2002);

(iii) Invoicing Related Standards (Version 1.6, July 31, 2002);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.6, July 31, 2002) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.6, July 31, 2002), with the exception of Standards 5.3.6 and 5.3.7, and including the standards contained in Recommendations R02002 and R02002–2 (October 31, 2002).

* * * * *

[FR Doc. 03–6702 Filed 3–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 03—11]

RIN 1515–AD25

Compliance With Inflation Adjustment Act

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, (the Act), each Federal agency is required to adjust for inflation any civil monetary penalty covered by the Act that may be assessed in connection with violations of those statutes that the agency administers. While civil monetary penalties assessed by Customs under any provisions of the Tariff Act of 1930 are specifically exempted from the Act, Customs does administer two statutory provisions which provide for the assessment of civil monetary penalties that are covered by the Act. One statute concerns the transportation of passengers between ports or places in the United States; the other concerns the coastwise towing of vessels. The amount of the penalty that may be assessed for violations incurred under those statutes needs to be adjusted for inflation. Accordingly, Customs is amending its regulations in order to adjust the covered penalty amounts for inflation in compliance with the provisions of the Act.

EFFECTIVE DATE: March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202–572–8750).

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (hereinafter, the Act), which is codified at 28 U.S.C. 2461 note, and which was amended in 1996 by the Debt Collection Improvement Act (Pub. L. 104–134, section 31001(s); 110 Stat. 1321–373), provides that each Federal agency must adjust for inflation any civil monetary penalties covered by the Act that are assessed in connection with violations that are incurred under those statutes that the agency administers. To this end, pursuant to the Act, as amended by the Debt Collection Improvement Act, the responsible Federal agency was required, by October 23, 1996, to make an initial inflationary adjustment to any civil monetary penalty covered by the Act; and each agency was then required to make these necessary inflationary adjustments at least once every 4 years thereafter.

The Act expressly exempts from its coverage any penalties that Customs may assess for violations that are incurred under any provision of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*). However, Customs does administer two statutes that are subject to the Act; and the penalties that Customs may assess for violations of these statutes have not previously been adjusted for inflation as required by the Act.

Specifically, the two statutes administered by Customs that are subject to the Act are 46 U.S.C. App. 289 and 46 U.S.C. App. 316(a). Section 289 prohibits foreign vessels from transporting passengers between ports or places in the United States; the penalty assessed under 46 U.S.C. App. 289 is $200 for every passenger transported in violation of the statute (§ 4.80(b)(2), Customs Regulations (19 CFR 4.80(b)(2))). Section 316(a) prohibits certain vessels from towing any vessel, other than a vessel in distress, between ports or places in the United States embraced within the coastwise laws; the penalties assessed for violations of 46 U.S.C. App. 316(a) are a minimum of $250 to a maximum of $1,000 per violation, plus $50 per ton on the measurement of every vessel towed in violation of the statute (§ 4.92, Customs Regulations (19 CFR 4.92)).

Section 5 of the Act (28 U.S.C. 2461 note, section 5) provides that civil monetary penalties must be adjusted based upon the cost of living, either by increasing the maximum civil monetary penalty or by increasing the range of minimum and maximum penalties for each civil monetary penalty, as appropriate. Any increase determined under section 5 of the Act is to be rounded to the nearest multiple of $10 in the case of penalties less than or equal to $100, and multiples of $100 in the case of penalties greater than $100 or less than or equal to $1,000.

In calculating the specific amount of the adjustment to any civil monetary penalty covered by the Act, section 5 required that the first such adjustment, which was to be made by October 23, 1996, could not exceed 10 percent of the penalty. Thereafter, in determining the proper adjustment to any civil monetary penalty covered by the Act, section 5 provides for a cost-of-living adjustment that would be determined based on the percentage by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Hence, consistent with the provisions of Section 5 of the Act, as described, the civil penalty for violating 46 U.S.C. App. 289 is adjusted to $300 for every passenger transported in violation of the statute; and the civil penalties for violating 46 U.S.C. App. 316(a) are adjusted to a minimum of $350 and a maximum of $1,100, plus $60 per ton on the measurement of every vessel towed in violation of the statute.

Accordingly, this document amends §§ 4.80 and 4.92 of the Customs Regulations (19 CFR 4.80 and 4.92) in order to make the necessary inflation-induced adjustments to the penalties assessed for violations that are incurred under 46 U.S.C. App. 289 and 46 U.S.C. App. 316(a), as mandated by the Act. Furthermore, the specific authority citations for §§ 4.80 and 4.92 are revised to add a reference to the codification of the Act at 28 U.S.C. 2461 note.

Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12866

This final rule merely brings the Customs Regulations into conformance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. As such, pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), prior notice and public procedure are unnecessary in this case, and, pursuant to 5 U.S.C. 553(d)(3) of the APA, a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do these amendments meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects in 19 CFR Part 4

Administrative practice and procedure, Coastal zone, Inspection, Passenger vessels, Penalties, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues, and the specific authority citations for §§ 4.80 and 4.92 are revised, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.80 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 12106; 46 U.S.C. App. 251, 289, 319, 802, 808, 883, 883–1;

* * * * *

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. App. 316(a);

* * * * *

2. Section 4.80 is amended by revising paragraph (b)(2) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * *

(b) *Penalties for violating coastwise laws.* * * *

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $300 for each passenger so transported and landed (46 U.S.C. App. 289, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990).

* * * * *

3. Section 4.92 is amended by revising its second sentence to read as follows:

§ 4.92 Towing.

* * * The penalties for violation of this provision are a fine of from $350 to $1100 against the owner or master of the towing vessel and a further penalty against the towing vessel of $60 per ton of the towed vessel (46 U.S.C. App. 316(a), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990).

Robert C. Bonner,

Commissioner of Customs.

Approved: February 25, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–6754 Filed 3–20–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 03—15]

RIN 1515–AD20

Trade Benefits Under the African Growth and Opportunity Act

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to those provisions of the Customs Regulations that implement the trade benefits for sub-Saharan African countries contained in the African Growth and Opportunity Act (the AGOA). The interim regulatory amendments involve the textile and apparel provisions of the AGOA and in part reflect changes made to those statutory provisions by section 3108 of the Trade Act of 2002. The specific statutory changes addressed in this document involve the amendment of several provisions to clarify the status of apparel articles assembled from knit-to-

shape components, the inclusion of a specific reference to apparel articles formed on seamless knitting machines, a change of the wool fiber diameter specified in one provision, and the addition of a new provision to cover additional production scenarios involving the United States and AGOA beneficiary countries. This document also includes a number of other changes to the AGOA implementing regulations to clarify a number of issues that arose after their original publication.

DATES: Interim rule effective March 21, 2003; comments must be submitted by May 20, 2003.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Operational issues: Robert Abels, Office of Field Operations (202–927–1959). Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–572–8790).

SUPPLEMENTARY INFORMATION:

Background

The African Growth and Opportunity Act

The African Growth and Opportunity Act (the AGOA, Title I of Public Law 106–200, 114 Stat. 251) authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from designated beneficiary countries. The provisions of section 112 of the AGOA are reflected for tariff purposes in Subchapter XIX, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS).

Sections 10.211 through 10.217 of the Customs Regulations (19 CFR 10.211 through 10.217) set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment on textile and apparel articles pursuant to section 112 of the AGOA. Those regulations were adopted on an interim basis in T.D. 00–67, published in the **Federal Register** (65 FR 59668) on October 5, 2000, and took effect on October 1, 2000. Action to adopt those interim regulations as a final rule was withheld pending anticipated action on the part of Congress to amend the underlying statutory provisions.

Trade Act of 2002 Amendments

On August 6, 2002, the President signed into law the Trade Act of 2002 (the ''Act''), Public Law 107–210, 116 Stat. 933. Sections 3108(a) and (b) of the Act amended section 112(b) of the AGOA (19 U.S.C. 3721(b)) which specifies the textile and apparel articles to which preferential treatment applies under the AGOA. The amendments made by section 3108(a) of the Act to section 112(b) of the AGOA were as follows:

1. The article description in the introductory text of paragraph (b)(1) was amended to refer to apparel articles ''sewn or otherwise'' assembled and to include a reference to articles assembled ''from components knit-to-shape.'' The amended statutory text reads as follows:

> Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are * * *

2. The article description in paragraph (b)(2) was reorganized in order to accommodate the addition of references to apparel articles ''sewn or otherwise'' assembled and to apparel articles assembled ''from components knit-to-shape in the United States from yarns wholly formed in the United States.'' The amended statutory text reads as follows:

> Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in the United States).

3. The article description in the introductory text of paragraph (b)(3) was amended by removing the words ''and cut'' after ''wholly formed'' within the parenthetical phrase, by adding a reference to articles assembled ''from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries,'' and by adding a reference to ''apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries.'' The amended statutory text reads as follows:

> Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if such fabrics are classified under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in one or more beneficiary sub-Saharan African countries), or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, subject to the following:

4. The article description in paragraph (b)(3)(B)(i), which sets forth a special rule for lesser developed beneficiary sub-Saharan African countries, was amended to refer to preferential treatment ''under this paragraph,'' to refer to apparel articles wholly assembled ''or knit-to-shape and wholly assembled, or both,'' and to refer to preferential treatment regardless of the country of origin of the fabric ''or the yarn.'' The amended statutory text reads as follows:

> Subject to subparagraph (A), preferential treatment under this paragraph shall be extended through September 30, 2004, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric or the yarn used to make such articles.

5. The definition of ''lesser developed beneficiary sub-Saharan African country'' in paragraph (b)(3)(B)(ii) was amended by replacing the reference to the World Bank with a reference to the International Bank for Reconstruction and Development and by the addition of separate subparagraph references to Botswana and Namibia. The latter amendment in effect removes those two countries from the maximum per capita gross national product standard that applies to other countries covered by the definition. Neither of these changes affects the AGOA implementing regulations.

6. In paragraph (b)(4)(B), the reference to wool measuring ''18.5'' microns in diameter or finer was amended to read ''21.5'' microns in diameter or finer.

7. Finally, a new paragraph (b)(7) was added to cover hybrid operations, that is, combinations of various production scenarios described in other paragraphs under section 112(b). This new provision reads as follows:

> Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from components cut in the United States and one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States).

Section 3108(b) of the Act amended section 112(b) of the AGOA by increasing the applicable percentage used for determining the quantitative limits that apply to apparel articles entitled to preferential treatment under paragraph (b)(3). This change does not affect the AGOA implementing regulations.

On November 13, 2002, the President signed Proclamation 7626 (published in the **Federal Register** at 67 FR 69459 on November 18, 2002) which, among other things, in Annex II sets forth modifications to the HTSUS to implement the changes to section 112(b) of the AGOA made by section 3108 of the Act. The Proclamation provides that the HTSUS modifications that implement the changes made by section 3108(a) of the Act are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after August 6, 2002. The Proclamation further provides that the HTSUS modifications that implement the change to the applicable quantitative limit percentage made by section 3108(b) of the Act are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after October 1, 2002.

Changes to the Interim Regulatory Texts

As a consequence of the statutory changes described above and as a result of the modifications to the HTSUS made by Proclamation 7626, the interim AGOA implementing regulations published in T.D. 00–67 no longer fully reflect the current state of the law. In addition, following publication of those interim regulations, a number of other issues came to the attention of Customs that warrant clarification in the AGOA implementing regulations. Accordingly, this document sets forth interim amendments to the AGOA implementing regulations, with provision for public comment on those changes, to reflect the amendments to the statute mentioned above and to clarify or otherwise improve those previously published regulations. It is the intention of Customs, after the close of the public comment period prescribed in this document, to publish one document that (1) addresses both the comments submitted on the interim regulations published in T.D. 00–67 and the comments submitted on the interim regulations set forth in this document and (2) adopts, as a final rule, the AGOA implementing regulations contained in the two interim rule documents with any additional changes as may be appropriate based on issues raised in the submitted public comments. The interim regulatory changes contained in this document are discussed below.

Amendments To Reflect the Statutory Changes

The interim regulatory amendments set forth in this document that are in response to the statutory changes made to section 112(b) of the AGOA by section 3108 of the Act are as follows:

1. In § 10.212, a new definition covering knit-to-shape components is added to reflect the inclusion of references to ''components knit-to-shape'' in paragraphs (b)(1), (b)(2), (b)(3), and (b)(7) of the statute. Also, as a consequence of the addition of this new definition, the interim definition of ''knit-to-shape'' is recast as a definition covering knit-to-shape articles but without any other change to the wording of the definition.

2. In § 10.212, a new definition of ''wholly formed on seamless knitting machines'' is added to clarify the meaning of this expression as used in the amended text of paragraph (b)(3) of the statute (§ 10.213(a)(4) of the regulatory texts).

3. In § 10.213, paragraphs (a)(1) and (a)(2) are revised to conform to the amendment of the product description in the introductory text of paragraph (b)(1) of the statute.

4. In § 10.213, paragraph (a)(3) is revised to conform to the amendment of the product description in paragraph (b)(2) of the statute.

5. In § 10.213, paragraph (a)(4) is revised to conform to the amendment of the product description in the introductory text of paragraph (b)(3) of the statute.

6. In § 10.213, paragraph (a)(5) is revised to conform to the amendment of the product description that applies to lesser developed beneficiary countries in paragraph (b)(3)(B)(i) of the statute.

7. In § 10.213, the reference to ''18.5'' microns in paragraph (a)(7) is changed to read ''21.5'' microns to reflect the amendment made to paragraph (b)(4)(B) of the statute.

8. In § 10.213, a new paragraph (a)(11) is added to cover the hybrid operations described in new paragraph (b)(7) of the statute.

9. Finally, the preference group descriptions on the Certificate of Origin set forth under paragraph (b) of § 10.214 are revised to reflect the amended product descriptions in the statute and to include a reference to articles covered by new paragraph (b)(7) of the statute and paragraph (a)(11) of § 10.213.

Other Amendments

In addition to the regulatory amendments described above that result from the changes made to section 112(b) of the AGOA by section 3108 of the Act, Customs has included in this document a number of other changes to the interim regulations published in T.D. 00–67. These additional changes, which are intended to clarify or otherwise improve the interim regulatory texts, are as follows:

1. In the definition of ''wholly formed'' as it relates to yarn in the interim regulations, Customs failed to provide for textile strip of headings 5404 and 5405, HTSUS. Textile strip of headings 5404 and 5405, HTSUS, may be formed by extrusion, similar to the formation of filaments, or may be formed by slitting plastic film or sheet. With regard to what may be considered to be a yarn, Customs notes that ''yarn'' is defined in the *Dictionary of Fiber & Textile Technology* (KoSa, 1999), at 222, as follows: ''A generic term for a continuous strand of textile fibers, filaments, or material in a form suitable for knitting, weaving, or otherwise intertwining to form a textile fabric. Yarn occurs in the following forms: (1) A number of fibers twisted together (spun yarn), (2) a number of filaments laid together without twist (a zero-twist yarn), (3) a number of filaments laid together with a degree of twist, (4) a single filament with or without twist (a monofilament), or (5) a narrow strip of material, such as paper, plastic film, or metal foil, with or without twist, intended for use in a textile construction.'' The identical definition is found in *Dictionary of Fiber & Textile Technology* (Hoechst Celanese, 1990) at

181. There is nothing to indicate that Congress intended textile strip to be excluded from use in the AGOA, and Customs believes the term ''yarn'' may be understood to include that type of material. Accordingly, this document revises the § 10.212 definition of ''wholly formed'' as it relates to yarn to include a reference to textile strip. In addition, this document divides that definition of ''wholly formed'' into two definitions, one with reference to wholly formed fabrics and the other with reference to wholly formed yarns (and the latter definition is further corrected by removing the words ''and thread'' to reflect the fact that the statute and regulations do not use the word ''wholly'' in the context of thread formation); Customs believes that this approach will better clarify that there are distinct contexts in which ''wholly formed'' is used in the statute and regulations, which now also include the new seamless knitting machine context referred to above. Finally, at the end of the ''wholly formed fabrics'' definition, the words ''in a single country'' are replaced by ''in the United States or in one or more beneficiary countries'' in order to reflect the fact that fabric may be wholly formed in more than one beneficiary country in the case of articles covered by section 112(b)(3) of the AGOA and § 10.213(a)(4) of the regulatory texts.

2. As noted above, quantitative limits apply for preferential treatment purposes in the case of articles covered by section 112(b)(3) of the AGOA which is reflected in § 10.213(a)(4) and (5) of the regulatory texts. Those quantitative limit provisions are set forth in U.S. Note 2 to Subchapter XIX of Chapter 98, HTSUS, which requires the Committee for the Implementation of Textile Agreements to publish in the **Federal Register** the applicable aggregate quantity of imports allowed for each 12-month period. Customs believes that it would be helpful for a reader of the regulatory texts to know that those quantitative limits apply to the subject products. Accordingly, revised paragraphs (a)(4) and (a)(5) of § 10.213 as set forth in this document also include appropriate references to the quantitative limit provisions of U.S. Note 2 to Subchapter XIX of Chapter 98, HTSUS.

3. Section 112(b)(5)(A) of the AGOA, which is reflected in § 10.213(a)(8) of the regulatory texts, covers apparel articles that are constructed of either fabrics or yarns that are considered to be in ''short supply'' for purposes of Annex 401 of the NAFTA (that is, the fabrics or yarns are not required to be originating within the meaning of the NAFTA, if those fabrics or yarns undergo the specified tariff shift for that article and that article meets all other applicable requirements for an originating good). For example, sweaters of wool classified under subheading 6110.11.00 of the HTSUS that are knit to shape in a NAFTA country from 40 percent non-originating silk yarn and 60 percent originating wool yarn may qualify as originating goods because a tariff shift from silk yarn is allowed by the applicable tariff shift rule, but sweaters knit to shape from 40 percent originating silk yarn and 60 percent non-originating wool yarn will not qualify as originating goods because the non-originating wool yarn is classified under a heading (5106) from which a tariff shift is not allowed. Customs notes that the corresponding HTSUS provision (subheading 9819.11.21) contains a more explanatory description of the Annex 401 short supply rule; the regulatory text is revised in this document to conform to the approach used in the HTSUS provision. Customs further notes that the same short supply language appears within the textile provisions of the United States-Caribbean Basin Trade Partnership Act (the CBTPA) and the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), and in those contexts the short supply provision can only be interpreted to not apply to brassieres classifiable under subheading 6212.10 of the HTSUS because applying it would render meaningless the extensive provisions on brassieres in those Acts. Consequently, Customs has decided that the short supply provision does not apply to brassieres under the CBTPA and ATPDEA and that the same interpretation must apply for purposes of the AGOA. Customs notes in this regard that the NAFTA Annex 401 rule for articles classified in subheading 6212.10 of the HTSUS requires only the performance of certain specified production processes (that is, ''both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties'') and includes no requirements regarding the source of the fabrics or yarns. There is little logic in applying the short supply provision to a product where the NAFTA rule makes no mention of excluded materials. Thus, Customs believes that brassieres of subheading 6212.10, HTSUS, are not covered by section 112(b)(5)(A) of the AGOA and § 10.213(a)(8) of the regulations. The revised text of § 10.213(a)(8) set forth in this document therefore also includes appropriate exclusionary language to reflect this interpretation.

4. With reference to the findings, trimmings and interlinings provisions under § 10.213(b)(1), Customs believes that it would be useful to specify in the regulatory texts an appropriate basis for determining the ''cost'' of the components and the ''value'' of the findings and trimmings and interlinings. Customs further believes that the standard should be based on the regulations that apply to components and materials under subheading 9802.00.80, HTSUS (in particular, 19 CFR 10.17), and under the GSP (in particular, 19 CFR 10.177(c)). Accordingly, this document adds a new subparagraph (2) to § 10.213(b) to address this point and redesignates former subparagraph (2) of the interim regulatory texts as subparagraph (3).

5. In addition to the modification of the preference group descriptions on the Textile Certificate of Origin set forth under § 10.214(b) as discussed above, the format of the Certificate is modified and some of the blocks are moved and renumbered, solely for purposes of clarity. The instructions for completion of the Certificate in paragraph (c) of § 10.214 are also revised to reflect the changes made to the Certificate and to provide additional clarification regarding its completion, including provision for signature by an exporter's authorized agent having knowledge of the relevant facts.

6. In the case of articles described in § 10.213(a)(1), interim § 10.215(a) provided for the inclusion of the symbol ''D'' as a prefix to the applicable Chapter 98, HTSUS, subheading (that is subheading 9802.00.80) as the means for making the required written declaration on the entry documentation. This procedure was adopted because, contrary to the case of the other articles described in § 10.213(a), no unique HTSUS subheading had been identified for the articles covered by § 10.213(a)(1) when the interim regulations were published. A unique HTSUS subheading now exists for those articles (that is, subheading 9802.00.8042). Accordingly, § 10.215(a) is revised in this document to prescribe the same entry documentation declaration procedure for all articles described in § 10.213, that is, inclusion of the HTSUS Chapter 98 subheading under which the article is classified.

7. In § 10.216(b)(4)(ii), the cross-reference to ''§ 10.214(c)(14)'' is changed to read ''§ 10.214(c)(15)'' to reflect the addition of the provision regarding signature by the exporter or the exporter's authorized agent.

8. Finally, in § 10.217(a)(2) and (a)(3), the words ''in a beneficiary country'' are removed in recognition of the fact that

verification of documentation and other information regarding country of origin and verification of evidence regarding the use of U.S. materials might take place outside a beneficiary country, for example, within the United States.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment and United States tariff changes proclaimed by the President under the African Growth and Opportunity Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0224.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Assembly, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

For the reasons set forth in the preamble, part 10 of the Customs Regulations (19 CFR part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

* * * * *

2. In § 10.212, the definition of ''knit-to-shape'' and the definition of ''wholly formed'' are removed and new definitions of ''knit-to-shape articles'' and ''knit-to-shape components'' and ''wholly formed fabrics'' and ''wholly formed on seamless knitting machines'' and ''wholly formed yarns'' are added in appropriate alphabetical order to read as follows:

§ 10.212 Definitions.

* * * * *

Knit-to-shape articles. ''Knit-to-shape,'' when used with reference to sweaters or other apparel articles, means any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape.''

Knit-to-shape components. ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape.''

* * * * *

Wholly formed fabrics. ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in the United States or in one or more beneficiary countries.

Wholly formed on seamless knitting machines. ''Wholly formed on seamless knitting machines,'' when used to describe apparel articles, has reference to a process that created a knit-to-shape apparel article by feeding yarn(s) into a knitting machine to result in that article. When taken from the knitting machine, an apparel article created by this process either is in its final form or requires only minor cutting or trimming or the addition of minor components or parts such as patch pockets, appliques, capping, or elastic strip.

Wholly formed yarns. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in a single country.

3. In § 10.213:

a. Paragraphs (a)(1) through (a)(5) are revised;

b. Paragraph (a)(7) is amended by removing the words ''18.5 microns'' and adding, in their place, the words ''21.5 microns'';

c. Paragraph (a)(8) is revised;

d. A new paragraph (a)(11) is added; and

e. Paragraph (b)(2) is redesignated as paragraph (b)(3) and a new paragraph (b)(2) is added.

The revisions and additions read as follows:

§ 10.213 Articles eligible for preferential treatment.

(a) * * *

(1) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, (including fabrics not formed from

yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States).

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarns originating either in the United States or one or more beneficiary countries (including fabrics not formed from yarns, if those fabrics are classified under heading 5602 or 5603 of the HTSUS and are wholly formed in one or more beneficiary countries), or from components knit-to-shape in one or more beneficiary countries from yarns originating either in the United States or in one or more beneficiary countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary country from yarns originating either in the United States or in one or more beneficiary countries, subject to the applicable quantitative limit published in the **Federal Register** pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(5) Apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make the articles, subject to the applicable quantitative limit published in the **Federal Register** pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

* * * * *

(8) Apparel articles, other than brassieres classifiable under subheading 6212.10, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabrics or yarn that is not formed in the United States or a beneficiary country, provided that apparel articles of those fabrics or yarn would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico;

* * * * *

(11) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with thread formed in the United States:

(i) From components cut in the United States and in one or more beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(11)(i) or paragraph (a)(11)(ii) of this section.

(b) * * *

(2) *''Cost''and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (b)(1) of this section means:

(i) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to a beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (b)(2)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

* * * * *

4. In § 10.214, paragraphs (b) and (c) are revised to reads as follows:

§ 10.214 Certificate of Origin.

* * * * *

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 4820–02–P

African Growth and Opportunity Act
Textile Certificate of Origin

1. Exporter Name and Address:	3. Importer Name and Address:
2. Producer Name and Address:	4. Preference Group:
5. Description of Article:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
1-A	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States.	10.213(a)(1)
2-B	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. After assembly, the apparel is embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.	10.213(a)(2)
3-C	Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. and beneficiary country knit-to-shape components, from U.S. yarns and sewing thread. The U.S. fabrics may be cut in beneficiary countries or in beneficiary countries and the United States.	10.213(a)(3) or 10.213(a)(11)
4-D	Apparel assembled from beneficiary country fabrics and/or knit-to-shape components, from yarns originating in the United States and/or one or more beneficiary countries.	10.213(a)(4)
5-E	Apparel assembled or knit-to-shape and assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make such articles.	10.213(a)(5)
6-F	Knit-to-shape sweaters in chief weight of cashmere.	10.213(a)(6)
7-G	Knit-to-shape sweaters 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer.	10.213(a)(7)
8-H	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.213(a)(8) or 10.213(a)(9)
9-I	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral consultations.	10.213(a)(10)

6. U.S./African Fabric Producer Name and Address:	7. U.S./African Yarn Producer Name and Address:
	8. U.S. Thread Producer Name and Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply or Designated Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17. Telephone: Facsimile:

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(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the number and/or letter that identifies the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10 should be completed only when the preference group identifier ''8'' and/or ''H'' is inserted in block 4 and should state the name of the fabric or yarn that is in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see § 10.216(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The ''to'' date is the date on which the blanket period expires;

(16) The telephone and facsimile numbers included in block 17 should be those at which the person who signed the Certificate may be contacted; and

(17) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

5. In § 10.215, paragraph (a) is revised to read as follows:

§ 10.215 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.214, that covers the article being imported, and that is in the possession of the importer.

* * * * *

§ 10.216 [Amended]

6. In § 10.216, the second sentence of paragraph (b)(4)(ii) is amended by removing the reference ''§ 10.214(c)(14)'' and adding, in its place, the reference ''§ 10.214(c)(15)''.

§ 10.217 [Amended]

7. In § 10.217, paragraphs (a)(2) and (a)(3) are amended by removing the words ''in a beneficiary country''.

Robert C. Bonner,

Commissioner of Customs.

Approved: February 25, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–6760 Filed 3–20–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 03–12]

RIN 1515–AD22

Trade Benefits Under the Caribbean Basin Economic Recovery Act

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to those provisions of the Customs Regulations that implement the trade benefits for Caribbean Basin countries contained in section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA). The interim regulatory amendments involve the textile and apparel provisions of section 213(b) and in part reflect changes made to those statutory provisions by section 3107 of the Trade Act of 2002. The specific statutory changes addressed in this document involve the amendment of several provisions to clarify the status of apparel articles assembled from knit-to-shape components, the addition of language requiring any dyeing, printing, and finishing of certain fabrics to be done in the United States, the inclusion of exception language in the brassieres provision regarding articles entered under other CBERA apparel provisions, the addition of a provision permitting the dyeing, printing, and finishing of thread in the Caribbean region, and the addition of a new provision to cover additional production scenarios involving the United States and the Caribbean region. This document also includes a number of other changes to the CBERA textile and apparel implementing regulations to clarify a number of issues that arose after their original publication.

DATES: Interim rule effective March 21, 2003; comments must be submitted by May 20, 2003.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Operational issues:* Robert Abels, Office of Field Operations (202–927–1959). *Legal issues:* Cynthia Reese, Office of Regulations and Rulings (202–572–8790).

SUPPLEMENTARY INFORMATION:

Background

Textile and Apparel Articles Under the Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute, codified at 19 U.S.C. 2701–2707) instituted a duty preference program that applies to exports of goods from those Caribbean Basin countries that have been designated by the President as program beneficiaries. On May 18, 2000, the President signed into law the Trade and Development Act of 2000, Public Law 106–200, 114 Stat. 251, which included as Title II the United States-Caribbean Basin Trade Partnership Act, or CBTPA. The CBTPA provisions included section 211 which amended section 213(b) of the CBERA (19 U.S.C. 2703(b)) in order to, among other things, provide in new paragraph (2) for the preferential treatment of certain textile and apparel articles, specified in subparagraph (A), that had previously been excluded from the CBI duty-free program. The preferential treatment for those textile and apparel articles under paragraph (2)(A) of section 213(b) involves not only duty-free treatment but also entry in the United States free of quantitative restrictions, limitations, or consultation levels.

Sections 10.221 through 10.227 of the Customs Regulations (19 CFR 10.221 through 10.227) set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment of textile and apparel articles pursuant to the provisions added to section 213(b) by the CBTPA. Those regulations were adopted on an interim basis in T.D. 00–68, published in the **Federal Register** (65 FR 59650) on October 5, 2000, and took effect on October 1, 2000. Action to adopt those interim regulations as a final rule was withheld pending anticipated action on the part of Congress to amend the underlying statutory provisions.

Trade Act of 2002 Amendments

On August 6, 2002, the President signed into law the Trade Act of 2002 (the ''Act''), Pub. L. 107–210, 116 Stat. 933. Section 3107(a) of the Act made a number of changes to the textile and apparel provisions of paragraph (2)(A) of section 213(b) of the CBERA. The amendments made by section 3107(a) of the Act were as follows:

1. The article description in the introductory text of paragraph (2)(A)(i) was amended to refer to apparel articles ''sewn or otherwise'' assembled and to include a reference to articles assembled ''from components knit-to-shape.'' The amended statutory text reads as follows:

> Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed and cut in the United States) that are * * *.

2. At the end of paragraph (2)(A)(i), two new sentences were added to provide that apparel articles entered on or after September 1, 2002, will qualify for preferential treatment under paragraph (2)(A)(i) only if, in the case of knit fabrics and woven fabrics, all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. This dyeing, printing, and finishing provision, which applies equally to the articles covered by paragraph (2)(A)(i)(I) and to the articles covered by paragraph (2)(A)(i)(II), reads as follows:

> Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

3. The article description in paragraph (2)(A)(ii) was reorganized in order to accommodate the addition of references to apparel articles ''sewn or otherwise'' assembled and to apparel articles assembled ''from components knit-to-shape in the United States from yarns wholly formed in the United States.'' In addition, the same dyeing, printing, and finishing language described above was added at the end of this paragraph. The amended paragraph (2)(A)(ii) text reads as follows:

> Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed in the United States). Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

4. The quantitative limitation provisions for knit apparel set forth in paragraphs (2)(A)(iii)(II) and (2)(A)(iii)(IV) were revised. These statutory changes do not affect the regulatory provisions and therefore are not dealt with in this document.

5. In paragraph (2)(A)(iv) which covers brassieres, subclause (I) was amended by the addition of exception language regarding articles covered by certain other clauses under paragraph (2)(A). In addition, subclauses (II) and (III), which set forth 75 and 85 percent U.S. fabric content requirements that apply to articles described in subclause (I) beginning on October 1, 2001, were amended by replacing each reference to ''fabric components'' with ''fabrics,'' by adding exclusion language regarding findings and trimmings after each reference to fabric(s), and by adding various references to articles that are ''entered'' and that are ''eligible'' under clause (iv). Since the subclause (II) and (III) provisions were not dealt with in T.D. 00–68 but rather were the subject of a separate interim rule document (*see* T.D. 01–74 published in the **Federal Register** at 66 FR 50534 on October 4, 2001), the changes which section 3107(a) of the Act made to those provisions similarly will be dealt with in a separate rulemaking procedure. Accordingly, this document addresses only that portion of paragraph (2)(A)(iv) text that was dealt with in T.D. 00–68, that is, subclause (I) which, as amended by section 3107(a) of the Act, reads as follows:

> Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled

in the United States, or one or more CBTPA beneficiary countries, or both.

6. In paragraph (2)(A)(vii) which consists of multiple subclauses setting forth special rules regarding the treatment of certain fibers, yarns, materials or components for purposes of preferential treatment, a new subclause (V) was added to clarify the status of dyed, printed, or finished thread. This new provision reads as follows:

An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

7. Finally, a new clause (ix) was added to paragraph (2)(A) to cover hybrid operations, that is, combinations of various production scenarios described in other clauses under paragraph (2)(A). This new provision, which also incorporates the new dyeing, printing, and finishing language, reads as follows:

Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS). Apparel articles shall qualify under this clause only if they meet the requirements of clause (i) or (ii) (as the case may be) with respect to dyeing, printing, and finishing of knit and woven fabrics from which the articles are assembled.

On November 13, 2002, the President signed Proclamation 7626 (published in the **Federal Register** at 67 FR 69459 on November 18, 2002) which, among other things, in Annex I sets forth modifications to the HTSUS to implement the changes to section 213(b)(2)(A) of the CBERA made by section 3107(a) of the Act. The Proclamation provides that the HTSUS modifications that implement the changes made by section 3107(a) of the Act are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, except that (1) the provisions of Annex I relating to the dyeing, printing, and finishing of fabrics are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2002, and (2) the provisions of Annex I relating to the new quantitative limits for certain knit apparel and relating to the CBTPA brassieres provision are effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002.

On December 31, 2002, the Office of the United States Trade Representative (USTR) published a notice in the **Federal Register** (67 FR 79954) setting forth technical corrections to the HTSUS to address several inadvertent errors and omissions in various Presidential Proclamations. With regard to Proclamation 7626, this notice made the following two changes to the article description in subheading 9820.11.18, HTSUS: (1) removal of the parenthetical exception reference regarding non-underwear t-shirts, effective on or after October 2, 2000; and (2) insertion of the words ‘‘, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both’’ after the phrase ‘‘from yarns wholly formed in the United States,’’ effective on or after August 6, 2002.

Changes to the Interim Regulatory Texts

As a consequence of the statutory changes described above and as a result of the modifications to the HTSUS made by Proclamation 7626 and by the December 31, 2002, USTR notice, the interim CBTPA implementing regulations published in T.D. 00–68 no longer fully reflect the current state of the law. In addition, following publication of those interim regulations, a number of other issues came to the attention of Customs that warrant clarification in the CBTPA implementing regulations. Accordingly, this document sets forth interim amendments to the CBTPA implementing regulations, with provision for public comment on those changes, to reflect the amendments to the statute mentioned above and to clarify or otherwise improve those previously published regulations. It is the intention of Customs, after the close of the public comment period prescribed in this document, to publish one document that (1) addresses both the comments submitted on the interim regulations published in T.D. 00–68 and the comments submitted on the interim regulations set forth in this document and (2) adopts, as a final rule, the CBTPA implementing regulations contained in the two interim rule documents with any additional changes as may be appropriate based on issues raised in the submitted public comments. The interim regulatory changes contained in this document are discussed below.

Amendments To Reflect the Statutory Changes

The interim regulatory amendments set forth in this document that are in response to the statutory changes made to section 213(b) of the CBERA by section 3107(a) of the Act are as follows:

1. In § 10.223, paragraphs (a)(1) and (a)(2) are revised to conform to the amendment of the product description in the introductory text of paragraph (2)(A)(i) of the statute. The amended regulatory text in each case includes a cross-reference to new paragraph (b), discussed below, which addresses, among other things, the new statutory provision regarding dyeing, printing, and finishing of fabrics.

2. In § 10.223, paragraph (a)(3) is revised to conform to the amendment of the product description in paragraph (2)(A)(ii) of the statute. The amended regulatory text also includes a cross-reference to new paragraph (b), discussed below, which addresses the new statutory provision regarding dyeing, printing, and finishing of fabrics.

3. In § 10.223, paragraph (a)(6) is revised to conform to the amendment of the description of brassieres contained in subclause (I) of paragraph (2)(A)(iv) of the statute.

4. In § 10.223, paragraph (a)(12), which corresponds to subheading 9820.11.18, HTSUS, is revised in order to (1) reflect the HTSUS changes made in the December 31, 2002, USTR notice discussed above and (2) include a cross-reference to new paragraph (b), discussed below, which addresses the new statutory provision regarding dyeing, printing, and finishing of fabrics.

5. In § 10.223, a new paragraph (a)(13) is added to cover the hybrid operations described in new clause (ix) of paragraph (2)(A) of the statute. This new provision also includes a cross-reference to new paragraph (b) which addresses the new statutory provision regarding dyeing, printing, and finishing of fabrics.

6. In § 10.223, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) and a new paragraph (b) is added primarily to address the issue of dyeing, printing, and finishing of fabrics. The following points are noted regarding this new paragraph (b) text:

a. Customs believes that it is preferable to set forth the basic statutory dyeing, printing, and finishing rule in one place in the regulations rather than repeat it in each of the article description contexts to which the rule relates. Customs notes that this is similar to the approach taken for

HTSUS purposes in Annex I to Proclamation 7626 referred to above.

b. As regards the structure of paragraph (b), it is divided into two parts. Paragraph (b)(1) covers dyeing, printing, and finishing operations and consists of a general statement followed by two specific limitations, the first one of which addresses the statutory rule adopted in the Trade Act of 2002. Paragraph (b)(2) covers post-assembly and other operations (for example, embroidering, stone-washing, perma-pressing, garment-dyeing) and consists of a general statement followed by one specific limitation.

c. The general statements regarding dyeing, printing, and finishing operations in paragraph (b)(1) and regarding other operations in paragraph (b)(2) are specifically intended to clarify the status of those operations under the CBTPA program when applied to yarns, fabrics, components and articles in those contexts that are not directly addressed in the statutory texts. The general statement in each case provides that the operations in question may be performed on any yarn or fabric or component, or on any article, without affecting the eligibility of an article for preferential treatment, provided that the dyeing, printing, finishing, or other operation is performed only in the United States or in a CBTPA beneficiary country. Customs believes that limiting those processes to the United States and CBTPA beneficiary countries is consistent with the overall objective of the CBTPA program. Customs notes in this regard that the Conference Report relating to the CBTPA legislation (House Report 106–606, 106th Congress, 2d Session) states the conferees' intent to foster increased opportunities for U.S. textile and apparel companies to expand co-production arrangements with CBTPA beneficiary countries. Moreover, the findings of Congress in section 202 of the Trade and Development Act of 2000 specifically referred to the offering of benefits to Caribbean Basin countries to ''promote the growth of free enterprise and economic opportunity in those neighboring countries.'' Those findings also stated that ''increased trade and economic activity between the United States and countries in the Western Hemisphere will create new jobs in the United States as a result of expanding export opportunities.''

d. The dyeing, printing, and finishing provision of paragraph (b)(1)(i) corresponds to the statutory provision and therefore refers specifically to articles described in paragraphs (a)(1), (a)(2), (a)(3), (a)(12), and (a)(13) of § 10.223. However, the regulatory text refers to knitted ''or crocheted'' fabrics, in order to reflect the terminology employed in Annex I to Proclamation 7626. In addition, this regulatory text includes a reference to a fabric component ''produced from fabric'' in order to (1) reflect the fact that apparel articles are most often assembled from apparel components rather than from fabrics and (2) clarify the Customs position that knitting to shape does not create a fabric but rather results in the creation of a component that is ready for assembly without having gone through a fabric stage.

e. The second provision under the general rule regarding dyeing, printing, and finishing operations, set forth in paragraph (b)(1)(ii), reflects the principle that in the case of assembled articles described in paragraph (a)(1), and in the case of assembled luggage described in paragraph (a)(10), an operation that is incidental to the assembly process may be performed in a CBTPA beneficiary country. This provision reflects the terms of subheading 9802.00.80, HTSUS, and the regulations under that HTSUS provision which include, in 19 CFR 10.16(c), a list of operations not considered incidental to assembly.

f. The statement in the last sentence of paragraph (b)(2) regarding other operations is included for the same reason stated at point e. above in connection with paragraph (b)(1) concerning operations incidental to assembly under subheading 9802.00.80, HTSUS.

7. In § 10.223, a new subparagraph (3) is added at the end of redesignated paragraph (c) to cover the new statutory provision regarding dyed, printed, or finished thread.

8. Finally, the preference group descriptions on the Certificate of Origin set forth under paragraph (b) of § 10.224 are revised to reflect the amended product descriptions in the statute and to include a reference to articles covered by new clause (ix) of paragraph (2)(A) of the statute and paragraph (a)(13) of § 10.223.

Other Amendments

In addition to the regulatory amendments described above that result from the changes made to section 213(b) of the CBERA by section 3107(a) of the Act, Customs has included in this document a number of other changes to the interim regulations published in T.D. 00–68. These additional changes, which are intended to clarify or otherwise improve the interim regulatory texts, are as follows:

1. In § 10.222, in the text of the definition of ''assembled in one or more CBTPA beneficiary countries,'' the word ''CBTPA'' is added before the words ''beneficiary countries.''

2. Customs believes that it would be useful to include a definition of ''luggage'' in the regulatory texts in order to clarify the scope of paragraphs (a)(10) and (a)(11) of § 10.223. Customs further believes that the meaning of this term should be consistent with trade practice to the greatest extent practicable. While no definition of luggage appears in the HTSUS, it is noted that this term was defined with specificity in the Subpart D headnotes to Schedule 7 of the predecessor Tariff Schedules of the United States (TSUS). Customs believes that the TSUS definition is consistent with what the industry would consider ''luggage'' to have been then and to be now. Accordingly, § 10.222 is amended by the inclusion of a new definition of ''luggage'' that is based on the definition that appeared in the TSUS.

3. Customs has found two errors in the § 10.222 definition of ''wholly formed'' as it relates to yarns or thread. First, the reference to ''thread'' in this context is inappropriate because the CBTPA texts do not use the expression ''wholly formed'' with reference to thread (thread needs only to be ''formed'' in the United States). Second, Customs failed to provide for textile strip classified in headings 5404 and 5405 of the HTSUS.

Regarding the second point, it is noted that textile strip may be formed by extrusion, similar to the formation of filaments, or may be formed by slitting plastic film or sheet. With regard to what may be considered to be a yarn, Customs notes that ''yarn'' is defined in the *Dictionary of Fiber & Textile Technology* (KoSa, 1999), at 222, as follows: ''A generic term for a continuous strand of textile fibers, filaments, or material in a form suitable for knitting, weaving, or otherwise intertwining to form a textile fabric. Yarn occurs in the following forms: (1) A number of fibers twisted together (spun yarn), (2) a number of filaments laid together without twist (a zero-twist yarn), (3) a number of filaments laid together with a degree of twist, (4) a single filament with or without twist (a monofilament), or (5) a narrow strip of material, such as paper, plastic film, or metal foil, with or without twist, intended for use in a textile construction.'' The identical definition is found in *Dictionary of Fiber & Textile Technology* (Hoechst Celanese, 1990) at 181. There is nothing to indicate that Congress intended textile strip to be excluded from use in the CBTPA, and Customs believes the term ''yarn'' may

be understood to include that type of material.

Accordingly, the definition of ''wholly formed'' as it relates to yarns is amended in this document by removing the words ''or thread'' and by adding language regarding textile strip.

4. In § 10.223(a)(4), in the second parentheses, the words ''classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS and described in paragraph (a)(5) of this section'' are added in order to align the text more closely on the corresponding wording in HTSUS subheading 9820.11.09.

5. With reference to the findings, trimmings and interlinings provisions under redesignated § 10.223(c)(1), Customs believes that it would be useful to specify in the regulatory texts an appropriate basis for determining the ''cost'' of the components and the ''value'' of the findings and trimmings and interlinings. Customs further believes that the standard should be based on the regulations that apply to components and materials under subheading 9802.00.80, HTSUS (in particular, 19 CFR 10.17), and under the GSP (in particular, 19 CFR 10.177(c)). Accordingly, this document adds a new subparagraph (ii) to § 10.223(c)(1), with former subparagraph (ii) consequently redesignated as (iii), to address this point.

6. In addition to the modification of the preference group descriptions on the Textile Certificate of Origin set forth under § 10.224(b) as discussed above, the format of the Certificate is modified and some of the blocks are reworded solely for purposes of clarity. The instructions for completion of the Certificate in paragraph (c) of § 10.224 are also revised to reflect the changes made to the Certificate and to provide additional clarification regarding its completion, including provision for signature by an exporter's authorized agent having knowledge of the relevant facts.

7. In the case of articles described in §§ 10.223(a)(1) and (a)(10), § 10.225(a) as published in T.D. 00–68 provided for the inclusion of the symbol ''R'' as a prefix to the applicable Chapter 98, HTSUS, subheading (that is subheading 9802.00.80) as the means for making the required written declaration on the entry documentation. This procedure was adopted because, contrary to the case of the other articles described in § 10.223(a), no unique HTSUS subheading had been identified for these two groups of articles when T.D. 00–68 was published. Unique HTSUS subheadings now exist for these two groups of articles (that is, subheading 9802.00.8044 in the case of § 10.223(a)(1) articles and subheading 9802.00.8046 in the case of § 10.223(a)(10) articles). Accordingly, § 10.225(a) has been modified to prescribe the same entry documentation declaration procedure for all articles described in § 10.223, that is, inclusion of the HTSUS Chapter 98 subheading under which the article is classified.

8. In § 10.227(a)(2) and (3), the words ''in a CBTPA beneficiary country'' have been removed in recognition of the fact that verification of documentation and other information regarding country of origin and verification of evidence regarding the use of U.S. materials might take place outside a beneficiary country, for example within the United States.

9. Finally, in addition to those conforming changes already noted above, some paragraph or other references within regulatory text in §§ 10.223, 226 and 10.227 have been changed to conform to changes to the regulatory texts discussed above.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment and United States tariff changes proclaimed by the President under the Caribbean Basin Economic Recovery Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Assembly, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

For the reasons set forth in the preamble, part 10 of the Customs Regulations (19 CFR part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

2. In § 10.222:

a. The text of the definition of ''assembled in one or more CBTPA beneficiary countries'' is amended by adding the word ''CBTPA'' between the words ''more'' and ''beneficiary'';

b. A new definition of ''luggage'' is added; and

c. The text of the definition of ''wholly formed'' is amended by removing the words ''or thread'' and adding after ''filament'' the words '', strip, film, or sheet and including slitting a film or sheet into strip,'.

The addition reads as follows:

§ 10.222 Definitions.

* * * * *

Luggage. ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

* * * * *

3. In § 10.223:

a. Paragraphs (a)(1), (a)(2) and (a)(3) are revised;

b. Paragraph (a)(4) is amended by removing the words ''(other than non-underwear t-shirts)'' and adding, in their place, the words ''(other than non-underwear t-shirts classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS and described in paragraph (a)(5) of this section)'';

c. Paragraph (a)(6) is revised;

d. Paragraph (a)(11) is amended by removing the word ''and'' after the semicolon;

e. Paragraph (a)(12) is revised;

f. A new paragraph (a)(13) is added;

g. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) respectively and a new paragraph (b) is added; and

h. In newly redesignated paragraph (c), paragraph (c)(1)(ii) is redesignated as paragraph (c)(1)(iii), newly redesignated paragraph (c)(1)(iii) is amended by removing the words ''paragraph (b)(1)(i)(A)'' and adding, in their place, the words ''paragraph (c)(1)(i)(A)'' and removing the words ''paragraph (b)(1)(i)'' and adding, in their place, the words ''paragraph (c)(1)(i)'', and new paragraphs (c)(1)(ii) and (c)(3) are added.

The revisions and additions read as follows:

§ 10.223 Articles eligible for preferential treatment.

(a) * * *

(1) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(2) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a CBTPA beneficiary country, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(3) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

* * * * *

(6) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more CBTPA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(5), paragraphs (a)(7) through (a)(9), or paragraph (a)(12), and provided that any applicable additional requirements set forth in § 10.228 are met;

* * * * *

(12) Knitted or crocheted apparel articles cut and assembled in one or more CBTPA beneficiary countries from fabrics wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed wholly in the United States), provided that the assembly is with thread formed in the United States, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section; and

(13) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States:

(i) From components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(13)(i) or paragraph (a)(13)(ii) of this section; and

(iv) Provided that any processing not described in this paragraph (a)(13) conforms to the rules set forth in paragraph (b) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or

knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), (a)(3), (a)(12), or (a)(13) of this section that is entered on or after September 1, 2002, and that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) * * *

(1) * * *

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

* * * * *

(3) *Dyed, printed, or finished thread.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

* * * * *

4. In § 10.224, paragraphs (b) and (c) are revised to read as follows:

§ 10.224 Certificate of Origin.

* * * * *

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 4820–02–P

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	4. Preference Group:
5. Description of Article:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
A.	Apparel assembled from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(1)
B.	Apparel assembled and further processed from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(2)
C.	Apparel (except apparel in group K) assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(3)
D.	Apparel knit-to-shape in the region from U.S. yarn (except socks in heading 6115); and knit apparel cut and assembled from regional or regional and U.S. fabrics from U.S. yarn. This group does not include non-underwear t-shirts in group E.	10.223(a)(4)
E.	Non-underwear t-shirts in subheading 6109.10.00 & 6109.90.10 made of regional fabric from U.S. yarn.	10.223(a)(5)
F.	Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries.	10.223(a)(6)
G.	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.223(a)(7) 10.223(a)(8)
H.	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral consultations.	10.223(a)(9)
I.	Textile luggage assembled from U.S. formed and cut fabric from U.S. yarns.	10.223(a)(10)
J.	Textile luggage cut and assembled from U.S. fabric from U.S. yarn.	10.223(a)(11)
K.	Knit apparel assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(12)
L.	Apparel assembled with U.S. thread from (1) U.S. fabric cut in the United States and the region, or (2) components knit-to-shape in the United States and the region, or (3) a combination of cutting and knitting-to-shape in the United States or the region.	10.223(a)(13)

6. U.S./Caribbean Fabric Producer Name & Address:	7. U.S./Caribbean Yarn Producer Name & Address: 8. U.S. Thread Producer Name & Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17: Telephone: Facsimile:

BILLING CODE 4820–02–C

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(12) Block 10 should be completed if the article described in block 5 incorporates a fabric or yarn described in preference group G and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see § 10.226(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The ''to'' date is the date on which the blanket period expires; and

(16) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

5. In § 10.225, paragraph (a) is revised to read as follows:

§ 10.225 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.223, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.226(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.224 and that covers the article being imported.

* * * * *

§ 10.226 [Amended]

6. In § 10.226, the second sentence of paragraph (b)(4)(ii) is amended by removing the reference ''§ 10.224(c)(14)'' and adding, in its place, the reference ''§ 10.224(c)(15)''.

§ 10.227 [Amended]

7. In § 10.227:

a. Paragraph (a)(2) is amended by removing the words ''in a CBTPA beneficiary country'';

b. Paragraph (a)(3) is amended by removing the words ''in a CBTPA beneficiary country''; and

c. Paragraph (b)(3) is amended by removing the words ''§ 10.223(c)(3)(i) through (iii)'' and adding, in their place, the words ''§ 10.223(d)(3)(i) through (iii)''.

Robert C. Bonner,

Commissioner of Customs.

Approved: February 28, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–6755 Filed 3–20–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 03–13]

RIN 1515–AD15

Entry of Certain Steel Products

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed amendment to the Customs Regulations to set forth special requirements for the entry of certain steel products. The steel products in question are primarily those designated by the President in Proclamation 7529 for increased duty or tariff-rate quota treatment under the safeguard provisions of section 203 of the Trade Act of 1974. The amendment requires the inclusion of an import license number on the entry summary or foreign-trade zone admission documentation filed with Customs for any steel product for which the U.S. Department of Commerce requires an import license under its steel licensing and import monitoring program.

EFFECTIVE DATE: Final rule effective: March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa Santana, Office of Field Operations (202–927–4342).

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2002, President Bush signed Proclamation 7529 ''To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products,'' which was published in the **Federal Register** (67 FR 10553) on March 7, 2002. The Proclamation was issued under section 203 of the Trade Act of 1974, as amended (19 U.S.C. 2253), and was in response to determinations by the U.S. International Trade Commission (ITC) under section 202 of the Trade Act of 1974, as

amended (19 U.S.C. 2252), that certain steel products were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industries producing like or directly competitive articles. The action taken by the President in the Proclamation consisted of the implementation of certain ''safeguard measures,'' specifically, the imposition of a tariff-rate quota on imports of specified steel slabs and an increase in duties on other specified steel products. The Proclamation included an Annex setting forth appropriate modifications to the Harmonized Tariff Schedule of the United States (HTSUS) to effectuate the President's action. The modifications to the HTSUS, which involved Subchapter III of Chapter 99 and included the addition of a new U.S. Note 11 and the addition of numerous new subheadings to cover the affected steel products, were made effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002.

On March 5, 2002, the President issued a Memorandum to the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative entitled ''Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products,'' which also was published in the **Federal Register** (67 FR 10593) on March 7, 2002. The Memorandum included an instruction to the Secretary of the Treasury and the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of imports of certain steel products. In addition, the Memorandum instructed the Secretary of Commerce, within 120 days of the effective date of the safeguard measures established by Proclamation 7529, to publish regulations in the **Federal Register** establishing the system of import licensing.

On July 18, 2002, the International Trade Administration of the Department of Commerce published in the **Federal Register** (67 FR 47338) a proposed rule to establish a steel licensing and surge monitoring system as instructed by the President in the March 5, 2002, Memorandum. Under the Commerce proposal, all importers of steel products covered by the President's section 203 action, including those products subject to country exemptions or product exclusions, would be required to obtain a steel import license and to provide the license information (that is, the license number) to Customs except in the case of merchandise which is eligible for informal entry under § 143.21 of the Customs Regulations (19 CFR 143.21). Commerce proposed to institute a registration system for steel importers, and steel import licenses would be issued to registered importers, customs brokers or their agents through an automatic steel import licensing system. Once registered, an importer or broker would submit the required license application information electronically to Commerce, and the system would then automatically issue a steel import license number for inclusion on the entry summary documentation filed with Customs.

Although the Presidential Memorandum of March 5, 2002, vested primary responsibility for the steel product import licensing and monitoring procedures in the Secretary of Commerce, the Secretary of the Treasury, through the U.S. Customs Service, is primarily responsible for the promulgation and administration of regulations regarding the importation and entry of merchandise in the United States. Accordingly, on August 9, 2002, Customs published in the **Federal Register** (67 FR 51800) a notice of proposed rulemaking to amend the Customs Regulations to provide an appropriate regulatory basis for the collection of the steel import license number on the entry summary documentation in accordance with the proposed regulatory standards promulgated by the Department of Commerce. The proposed amendment involved the addition of a new § 12.145 (19 CFR 12.145) to require the inclusion of a steel import license number on the entry summary in any case in which a steel import license number is required to be obtained under regulations promulgated by the Department of Commerce.

The August 9, 2002, notice included in the preamble a discussion of the potential consequences under the importer's bond for a failure to provide the required steel import license number to Customs on a timely basis and included a statement that, after new § 12.145 has been adopted as a final rule, Customs would publish appropriate guidelines which could outline circumstances in which liquidated damage claims in these cases may be reduced to $50 for a late filing of the required information or to $100 in the case of a complete failure to file the information. The August 9, 2002, notice also invited the public to submit written comments on the proposed regulatory amendment for consideration by Customs prior to taking final action of the proposal.

On December 31, 2002, the International Trade Administration of the Department of Commerce published in the **Federal Register** (67 FR 79845) a final rule document to add new regulations implementing the Steel Import Licensing and Surge Monitoring program. Those regulations, set forth at 19 CFR part 360, consist of eight sections (§§ 360.101–360.108) and reflect, with some changes, the proposals outlined in the proposed rule published by the Department of Commerce on July 31, 2002. Those changes reflected in the final regulatory texts adopted by Commerce that have a substantive impact on the text of § 12.145 as proposed by Customs are identified in the discussion of comments on the Customs proposal set forth below.

Discussion of Comments

Three commenters responded to the solicitation of comments in the August 9, 2002, notice of proposed rulemaking. Those comments are summarized and responded to below.

Comment: One commenter asserted that foreign-trade zone (FTZ) activities are part of the U.S. economic territory (even though they are legally defined as outside the customs territory of the United States) and that FTZ-stored steel constitutes part of U.S. steel inventories. This commenter therefore argued that FTZ activities must be included in the steel import licensing system and, further, that this FTZ license requirement should be imposed once, that is, at the time of admission of the steel into the FTZ.

Customs response: Customs notes that the issue raised by this commenter concerns the scope of the steel import licensing program which is a matter for which the Department of Commerce, rather than Customs, is responsible; therefore, Customs has no authority to impose the standard suggested by this commenter. However, Customs also notes in this regard that whereas under the July 18, 2002, Department of Commerce proposals a license would have been required for steel products twice, that is, as they entered and as they left an FTZ, the Commerce regulations adopted in the December 31, 2002, final rule document have addressed the concern raised by this commenter. Section 360.101(c) of those regulations specifically provides that all shipments of covered steel products into FTZs will require an import license prior to the filing of FTZ admission documents, that the license number(s) must be reported on the application for FTZ admission and/or status designation (Customs Form 214) at the

time of filing, and that a further steel license will not be required for shipments from FTZs into the commerce of the United States.

In order to reflect the standard regarding FTZ transactions set forth in the Commerce regulation referred to above, Customs in this final rule document has redrafted proposed § 12.145 to accommodate a reference to inclusion of the appropriate license number on Customs Form 214 at the time of filing with Customs. Thus, under the revised text, the import license number must be provided to Customs in two basic circumstances: (1) on Customs Form 7501 (or an electronic equivalent) in the case of entered merchandise; and (2) on Customs Form 214 in the case of merchandise admitted into an FTZ. In addition, the opening exception clause regarding informal entry that was included in the proposed text has not been retained in the revised § 12.145 text because it is covered in the license issuance standards promulgated by Commerce and thus does not have to be repeated here.

Comment: A commenter stated that in administrative message 02–0910 dated July 19, 2002, Customs presented a proposed methodology for enforcing compliance with the proposed licensing system subject to the August 9, 2002, Customs notice of proposed rulemaking. Under this methodology, foreign steel subject to licensing may enter a Customs bonded warehouse or be covered by a temporary importation bond (TIB) without a license; the license would be optional for both the warehouse and TIB entries. Stating that this optional treatment is inconsistent with the purpose of the licensing system, this commenter argued that all foreign steel subject to the licensing requirements should be treated identically, regardless of whether the steel is placed in a bonded facility, covered by a TIB, or admitted into an FTZ, and that this identical treatment should require the steel to be licensed and counted when it is admitted into an FTZ, entered into a bonded warehouse, or entered on a TIB.

Customs response: As regards the administrative message referred to by this commenter, Customs notes that it was intended only to advise the trade on the system requirements for filing the steel license information (number) when entry filing is effected electronically in the Automated Commercial System (ACS) through the automated broker interface (ABI). The administrative message was issued in recognition of the considerable lead time that is necessary in order to reprogram ABI user software and reflected the best information available at that time from the Department of Commerce regarding the steel import licensing program requirements, that is, the proposals published by Commerce on July 18, 2002.

As indicated in the preceding comment discussion regarding FTZs, the primary responsibility for the steel import licensing program rests with the Department of Commerce and, accordingly, Customs has no authority to impose standards that are at variance with the program requirements properly established by Commerce. Customs further notes that, in the final regulations published by Commerce on December 31, 2002, § 360.101(e) provides that import licenses are not required in the case of TIB entries, transportation and exportation (T&E) entries, and entries into a bonded warehouse, and that a license is required at the time of entry summary in the case of a covered steel product that is withdrawn from a bonded warehouse. In view of this regulatory standard, Customs cannot adopt the ''identical'' treatment principle suggested by this commenter, and the text of § 12.145 set forth in this final rule document has been modified to refer specifically to merchandise ''entered, or withdrawn from warehouse for consumption, in the customs territory of the United States'' in order to exclude from coverage TIB, T&E, and warehouse entry transactions.

Comment: A commenter referred to a statement that ''[a]ll imports of steel products * * * will be required to obtain a steel import license and provide the license number to U.S. Customs on the entry summary.'' This commenter raised the issue regarding the point at which a material is considered to be ''imported'' and suggested that, in the case of warehouse entries, that point should be when the material is withdrawn from the warehouse and a consumption entry is filed and not when the material is off-loaded under a warehouse entry and maintained in the bonded warehouse.

Customs response: The statement referred to by this commenter appeared in the proposed rule document published by the Department of Commerce on July 18, 2002, rather than in the notice of proposed rulemaking published by Customs on August 9, 2002. The statement was not set forth in that document as proposed regulatory text and therefore appears to have been directed to the general thrust of the steel import licensing program. Customs further notes that under the program as developed by Commerce, the mere fact of importation is not controlling as regards the licensing and license number reporting requirements. Rather, as already indicated in this comment discussion, the Department of Commerce proposals and final regulatory texts, as well as the text of § 12.145 as proposed and as set forth in this final rule document, make it clear that those requirements do not arise at the time of entry into a bonded warehouse but rather only upon withdrawal from the warehouse when Customs Form 7501 will be filed.

Comment: A commenter recommended that the Customs entry number not be a requirement at the time of applying for a license unless it is available at the time of filing. This commenter referred to two situations in which it would not be possible to provide the proper entry number when applying for the license. One situation involves Customs bonded warehouses, where the entry number assigned at the time of arrival in the United States is not the same as the entry number that applies when duty is eventually paid. The other situation involves split shipment situations where a portion of the cargo covered by one invoice or bill of lading is discharged and moved overland separately from the rest of the cargo, with the result that multiple entries will be filed for the merchandise covered by the one invoice or bill of lading.

Customs response: Customs first notes that the observations made by this commenter relate to the license issuance process which is controlled by the Department of Commerce regulations and not by the regulations promulgated by Customs. Moreover, Customs notes that, in the final regulations published by Commerce on December 31, 2002, § 360.103(b) provides that license filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the entry number is known at the time of filing for the license. Accordingly, the concern expressed by this commenter has been addressed in the Commerce final regulations.

Comment: A commenter referred to a statement that ''[t]he applicable license number(s) must cover the total quantity of steel entered and should match the information provided on the Customs entry summary.'' This commenter argued that it would be difficult to meet this requirement in some cases involving warehouse entries. For example, where goods are withdrawn for export to Canada, the inclusion of those quantities on an application for a license at the time of ''entry'' into the port would have an impact on the validity of the data collected. This

commenter also noted the possibility that a warehouse entry could be open for an extended period of time, requiring the government to monitor the open license for months or even years.

Customs response: The statement referred to by this commenter appeared in the proposed rule document published by the Department of Commerce on July 18, 2002, rather than in the notice of proposed rulemaking published by Customs on August 9, 2002, and this statement was not set forth in that document as proposed regulatory text. A similar statement does appear as regulatory text in the final rule document published by Commerce on December 31, 2002: The last sentence of § 360.101(a)(2) reads ''[t]he applicable license(s) must cover the total quantity of steel entered and should cover the same information provided on the Customs entry summary.'' This sentence appears in the context of a discussion of when a single license may cover multiple products and when separate licenses for steel entered under a single entry are required, and it immediately follows the statement that ''[a]s a result, a single Customs entry may require more than one steel import license.'' The regulatory text in question thus relates to the scope of the licensing procedure and therefore falls directly under the authority of Commerce rather than that of Customs.

Customs would also suggest that the potential problem outlined by the commenter regarding goods withdrawn from warehouse for shipment to Canada could be avoided by controlling the point at which application for the license is made. In other words, even though under 19 CFR 181.53 goods withdrawn from a U.S. duty-deferral program (such as a Customs bonded warehouse) for exportation to Canada must be treated as entered or withdrawn for consumption, and thus a Customs Form 7501 must be filed as a consequence of that exportation, the potential problem outlined by this commenter could be avoided simply if the importer did not apply for the license when the steel is entered in the warehouse but rather only when it, or any part of it, is withdrawn for shipment to Canada. This approach would also address the ''open license'' issue raised by this commenter.

Comment: One commenter raised an issue regarding the impact of the proposal on quota monitoring. The commenter specifically asked whether the licenses will play a role in tracking the quota for products excluded from the safeguard action that include a quota mechanism. This commenter suggested that the answer to this question would greatly impact both the timing for filing the license application and what information might need to be included on the application.

Customs response: Customs is simply responsible for collecting the license number and any related quota or other data required at the time of entry and for providing that data to the Department of Commerce. Responsibility for all other tracking aspects of the data collected lies with the Commerce and therefore is outside the regulatory authority exercised by Customs.

Comment: A commenter stated that the sole enforcement authority that Customs has regarding the proposed rule is the liquidated damages provision under 19 CFR 113.62. This commenter further argued that since Customs can mitigate liquidated damage claims, Customs must design its mitigation guidelines with respect to steel import licenses to ensure that importers will have a strong incentive to comply with the regulatory requirements. The commenter also referred to the preamble discussion in the August 9, 2002, notice of proposed rulemaking regarding future mitigation guidelines that would include a reduction of liquidated damage claims to $50 for a late filing of the required information or $100 in the case of a complete failure to file the information. Arguing that these amounts are negligible, the commenter stated that Customs should adopt guidelines similar to those which governed the entry of products from Canada under the 1996 Softwood Lumber Agreement, that is, mitigation to between 25 and 50 percent of the claim, but not less than $500 and not more than $3,000 per entry, and no mitigation if the importer completely failed to provide the required information.

Customs response: Customs does not agree that the mitigation standards applied to cases involving softwood lumber from Canada are appropriate in the present context. Subject to any changes that may be reflected in any published mitigation guidelines regarding the steel import license program, Customs remains of the opinion that the mitigated amounts reflected in the August 9, 2002, notice of proposed rulemaking are generally appropriate in this context.

Conclusion

Based on the final regulations adopted by the Department of Commerce and the analysis of the comments received as set forth above, Customs believes that proposed § 12.145 should be adopted as a final regulation with the changes to the text as discussed above.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment will not have a significant economic impact on a substantial number of small entities. Customs believes that the amendment, which involves the addition of only one data element to each of two existing required Customs forms, will have a negligible impact on importer operations. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0065 (Entry summary and continuation sheet) and OMB control number 1515–0086 (Application for foreign-trade zone admission and/or status designation). This rule does not involve any material change to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

Amendment to the Regulations

For the reasons stated in the preamble, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

2. A new center heading and new § 12.145 are added to read as follows:

Steel Products

§ 12.145 Entry or admission of certain steel products.

In any case in which a steel import license number is required to be obtained under regulations promulgated by the U.S. Department of Commerce, that license number must be included:

(a) On the entry summary, Customs Form 7501, or on an electronic equivalent, at the time of filing, in the case of merchandise entered, or withdrawn from warehouse for consumption, in the customs territory of the United States; or

(b) On Customs Form 214, at the time of filing under Part 146 of this chapter, in the case of merchandise admitted into a foreign trade zone.

Robert C. Bonner,

Commissioner of Customs.

Approved: February 25, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–6757 Filed 3–20–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Laidlomycin and Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for the use of approved, single-ingredient Type A medicated articles containing laidlomycin and chlortetracycline to formulate two-way combination drug Type C medicated feeds for cattle fed in confinement for slaughter.

DATES: This rule is effective March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: edubbin@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–201 for use of CATTLYST (laidlomycin propionate potassium) and AUREOMYCIN (chlortetracycline) Type A medicated articles to formulate two-way combination drug Type C medicated feeds for cattle fed in confinement for slaughter. The NADA is approved as of December 18, 2002, and the regulations are amended in 21 CFR 558.128 and 558.305 to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.128 *Chlortetracycline* is amended in paragraph (e)(6) by redesignating paragraphs (e)(6)(vii) through (e)(6)(xii) as paragraphs (e)(6)(viii) through (e)(6)(xiii); and by adding new paragraph (e)(6)(vii) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(e) * * *

(6) * * *

(vii) Laidlomycin in accordance with § 558.305.

* * * * *

3. Section 558.305 is amended by:

a. Revising the section heading;

b. Redesignating paragraph (b) as paragraph (c);

c. Adding new paragraphs (b) and (c)(3); and

d. Revising paragraphs (a) and (d) to read as follows:

§ 558.305 Laidlomycin.

(a) *Specifications.* Type A medicated articles containing 50 grams laidlomycin propionate potassium per pound.

(b) *Approvals.* See No. 046573 in § 510.600(c) of this chapter.

(c) *Special considerations.*

* * * * *

(3) Labeling for all Type B feeds (liquid and dry) and Type C feeds containing laidlomycin shall bear the following statements:

(i) Do not allow horses or other equines access to feeds containing laidlomycin propionate potassium.

(ii) The safety of laidlomycin propionate potassium in unapproved species has not been established.

(iii) Not for use in animals intended for breeding.

(d) *Conditions of use.* It is used in cattle being fed in confinement for slaughter as follows:

Laidlomycin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(1) 5		For improved feed efficiency and increased rate of weight gain.	Feed continuously in a Type C feed at a rate of 30 to 75 mg/head/day.	046573

Laidlomycin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(2) 5	Chlortetracycline10 mg/lb body weight	For improved feed efficiency and increased rate of weight gain; and for treatment of bacterial enteritis caused by *Echerichia coli* and bacterial pneumonia caused by *Pasteurella multocida* organisms susceptible to chlortetracycline.	Feed continuously at a rate of 30 to 75 mg laidlomycin propionate potassium per head per day for not more than 5 days. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal.	046573
(3) 5	Chlortetracycline 350 mg/head/day	For improved feed efficiency and increased rate of weight gain; and for control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline.	Feed continuously at a rate of 30 to 75 mg laidlomycin propionate potassium per head per day. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal.	046573
(4) 5 to 10		For improved feed efficiency.	Feed continuously in a Type C feed at a rate of 30 to 150 milligrams/head/day.	046573
(5) 5 to 10	Chlortetracycline 10 mg/pound body weight	For improved feed efficiency; and for treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline.	Feed continuously at a rate of 30 to 150 mg laidlomycin propionate potassium per head per day for not more than 5 days. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal.	046573
(6) 5 to 10	Chlortetracycline 350 mg/head/day	For improved feed efficiency; and for control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline.	Feed continuously at a rate of 30 to 150 mg laidlomycin propionate potassium per head per day. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal.	046573

Dated: February 25, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–6508 Filed 3–20–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 088–FON; FRL–7470–6]

Finding of Failure To Submit State Implementation Plan Revisions for Particulate Matter, California—San Joaquin Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that California failed to make a Clean Air Act (CAA or Act) state implementation plan (SIP) submittal for particulate matter of ten microns or less (PM–10) required for the San Joaquin Valley PM–10 nonattainment area (the San Joaquin Valley or the Valley). Under the Act, for serious areas failing to attain the PM–10 National Ambient Air Quality Standards (NAAQS) by the required attainment date, states are required to submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 NAAQS, and from the date of such submission until attainment, for an annual reduction of PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area (5% attainment plan). The San Joaquin Valley is a serious PM–10 nonattainment area that failed to meet its attainment date of December 31, 2001. Thus, the 5% PM–10 attainment plan was due on December 31, 2002 but has not yet been submitted.

This action triggers the 18-month clock for mandatory application of sanctions and the 2-year clock for a federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action is effective as of March 7, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Lo, U. S. Environmental Protection Agency, Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 972–3959; *lo.doris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. CAA PM–10 Planning Requirements for the San Joaquin Valley

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[1] Public Law 549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (1991). On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas including the San Joaquin Valley planning area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). EPA codified the boundaries of the San Joaquin Valley PM–10 nonattainment area at 40 CFR 81.305.[2]

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including San Joaquin Valley, were initially classified as moderate.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot ''practicably'' attain the PM–10 NAAQS by the moderate area attainment deadline, December 31, 1994. On January 8, 1993 (58 FR 3337), EPA made such a determination and reclassified the San Joaquin Valley planning area as serious.

The attainment deadline for the San Joaquin Valley is December 31, 2001. Section 189(b)(2) of the Act required the submission of SIP revisions addressing CAA sections 189(b) and (c) by August 8, 1994 and February 8, 1997. California made these required serious area submittals for the San Joaquin Valley and withdrew them on February 26, 2002. EPA then made a finding of failure to submit (67 FR 11925).

On July 23, 2002, EPA finalized a finding of failure to attain the annual and 24-hour PM–10 standards for the Valley by December 31, 2001 (67 FR 48039). For serious areas failing to meet their applicable attainment deadlines, section 189(d) of the CAA requires states to ''submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction of PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area.'' The 5% PM–10 attainment plan for the San Joaquin Valley was due on December 31, 2002. EPA has not yet received such a submittal from the State.

II. Final Action

A. Finding of Failure To Submit Required SIP Revisions

If California does not submit the required plan revisions within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submittal 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[3] The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal addressing the 5% attainment requirements for the San Joaquin Valley. In addition, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the submittal within 2 years of EPA's finding.

B. Effective Date Under the Administrative Procedures Act

This final action is effective on March 7, 2003. Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns SIP revisions that are already overdue and the State has been aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a ''clock'' that will not result in sanctions for 18 months, and that the State may ''turn off'' through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This final agency action is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. *See* 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Statutory and Executive Officer Reviews

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled Regulatory Planning and Review.''

B. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from

[1] EPA revised the NAAQS for PM–10 on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples, averaged over a three year period, is equal to or less than 50 micrograms per cubic meter (ug/m3). The 24-hour PM–10 standard of 150 ug/m3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. *See* 40 CFR 50.6 and 40 CFR part 50, appendix K.

[2] The San Joaquin Valley PM–10 planning area includes the following counties in California's central valley: Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera and Merced.

[3] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, *see* 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.''

Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides a finding that California has not met that requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 7, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03–6708 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 071–0379a; FRL–7456–6]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Mendocino County Air Quality Management District, and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and the Mendocino County Air Quality Management District (MCAQMD), and to rescind one rule from the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving and rescinding local rules that are administrative and address changes for clarity and consistency.

DATES: This rule is effective on May 20, 2003, without further notice, unless EPA receives adverse comments by April 21, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243–2801.

Mendocino County Air Quality Management District, 306 E. Gobbi St., Ukiah, CA 95482–5511.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	115	Legal Application and Incorporation of Other Regulations	36416	36671
MCAQMD	400(b)	Circumvention	34064	34290
MBUAPCD	209	State Ambient Air Quality Standards (Rescission)	36753	36870

On December 27, 1993 (MCAQMD), October 6, 2000 (ICAPCD), and February 8, 2001 (MBUAPCD), these rule submittals were found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved versions of these rules into the SIP on the dates listed: ICAPCD rule 115, February 3, 1989; MCAQMD rule 400(b), November 7, 1978; and MBUAPCD rule 209, July 13, 1987.

C. What Is the Purpose of the Submitted Rule Revisions?

Imperial rule 115 has been reformatted for consistency with the district's rule book and represents an improvement to the SIP.

Mendocino rule 400(b) has been revised to clarify that no one may emit air contaminants except in such fashion that compliance can be determined.

Monterey rule 209 is being rescinded because requirements have previously been incorporated into district rule 207. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination

with the other requirements, these rules must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988) and the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules and rule recission because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the proposed rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules and recission. If we receive adverse comments by April 21, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 20, 2003. This will incorporate these rules into the Federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

A. Why Were These Rules Submitted?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants. Table 2 lists some of the national milestones leading to the submittal of these rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP—Call). *See* section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 2003.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 17, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(159)(iii)(E), (194)(i)(G)(*2*), and (279)(i)(A)(*10*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(159) * * *

(iii) * * *

(E) Previously approved on July 13, 1987 in (c)(159)(iii)(A) of this section and now deleted without replacement, Rule 209.

* * * * *

(194) * * *

(i) * * *

(G) * * *

(*2*) Rule 400(b) adopted on April 6, 1993.

* * * * *

(279) * * *

(i) * * *

(A) * * *

(*10*) Rule 115 adopted on November 19, 1985 and amended on September 14, 1999.

* * * * *

[FR Doc. 03–6710 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0032; FRL–7294–1]

Imazethapyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid in/on canola seed (import commodity only), and the combined residues of imazethapyr, its metabolite 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid, and its metabolite 5-[1-(beta-D-glucopyranosyloxy)ethyl]-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid in or on animal feed, nongrass, forage and hay group. BASF requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 21, 2003. Objections and requests for hearings, identified by ID numbers OPP–2003–0032, must be received on or before May 20, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Antimicrobial pesticides (NAICS 32561)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established official public dockets for this action under docket identification (ID) number OPP–2003–0032. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of December 6, 2002 (67 FR 72678) (FRL–7283–3) and the **Federal Register** of January 3, 2003 (68 FR 370) (FRL–7283–4), EPA issued notices pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 6F4746 and PP 1E6286, respectively) by BASF. The notices included a summary of the petitions prepared by BASF, the registrant. There were no comments received in response to the notices of filing.

Petition 6F4746 requested that 40 CFR 180.447 be amended by establishing a tolerance for combined residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid as its ammonium salt, and its metabolite 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid both free and conjugated, in or on non-grass animal feed crops, forage, hay, and seed at 3.0 parts per million (ppm). Petition 1E6286 requested that 40 CFR 180.447 be amended to establish a tolerance for the sum of the residues of the herbicide imazethapyr 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid as its free acid or its ammonium salt (calculated as the acid), and its metabolite 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1- hydroxyethyl)-3-pyridinecarboxylic acid on canola seed at 0.1 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe''. Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

After analysis of the submitted residue chemistry data, EPA determined that appropriate tolerances for nongrass animal feed differ from those proposed by the registrant. EPA determined that available field trial data support the following tolerances for the combined residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, and its metabolites 2-[4,5-dihydro-4-methyl-4-(1-methylethyl-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid and 5-[1-(beta-D-glucopyranosyloxy)ethyl]-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid, applied as its free acid or ammonium salt, in or on the following raw agricultural commodities: Animal feed, nongrass, group, forage - 3.0 ppm; animal feed, nongrass, group, hay - 5.5 ppm; alfalfa, seed - 0.15 ppm; and alfalfa, seed screenings - 0.15 ppm. The currently established alfalfa forage and alfalfa hay tolerances will be removed since they will be covered by the new nongrass animal feed forage and hay group tolerances. The tolerance for canola seed will be established for residues of the parent compound, imazethapyr, only. Finally, EPA determined that tolerances of 0.10 ppm for imazethapyr and the metabolite 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid need to be established for meat byproducts of cattle, goat, hog, horse, and sheep; the registrant did not propose tolerances for these commodities. EPA determined that tolerances are not needed for eggs; milk; meat and fat of cattle, goat, hog, horse, and sheep; and poultry commodities because there is no reasonable expectation of finite residues based on the calculated maximum total dietary burdens and the results of the poultry metabolism study.

The data for nongrass animal feeds and canola were used in the aggregate risk assessment that was calculated to support establishing tolerances for rice commodities, and the risk discussion in the following Unit III. will frequently refer back to that final rule (FR notice dated August 29, 2002, 67 FR 55323) (FRL–7193–4).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances residues of imazethapyr in/on canola seed at 0.10 ppm, and for combined residues of imazethapyr on nongrass animal feed at 3 ppm for forage, 5.5 ppm for hay, and additional tolerances of 0.15 ppm for alfalfa seed and alfalfa seed screenings. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imazethapyr are discussed in Unit III. A. of the final rule that established imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (FR notice dated August 29, 2002, 67 FR 55323).

B. Toxicological Endpoints

The toxicological endpoints for imazethapyr are discussed in Unit III. B. of the final rule that established imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (FR notice dated August 29, 2002, 67 FR 55323).

C. Exposure Assessment

The exposure assessment for imazethapyr are discussed in Unit III. C. of the final rule that established imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (FR notice dated August 29, 2002, 67 FR 55323).

D. Safety Factor for Infants and Children

The safety factors for infants and children for imazethapyr are discussed in Unit III. D. of the final rule that

established imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (FR notice dated August 29, 2002, 67 FR 55323).

E. Aggregate Risks and Determination of Safety

The aggregate risks and determination of safety for imazethapyr are discussed in Unit III. E. of the final rule that established imazethapyr tolerances in or on rice, crayfish, and meat byproducts of certain cattle (FR notice dated August 29, 2002, 67 FR 55323). Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to imazethapyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Proposed enforcement methodologies have been submitted to enforce the tolerance expressions. Method M-2261 using a Capillary Electrophoresis (CE) buffer system has been validated and is suitable for enforcement purposes on the nongrass animal feeds. Method M-3319, using CE Chromatography with ultraviolet (UV) detection at 240 nanometers (nm) has been proposed as the enforcement method. This proposed method has been validated by an independent laboratory for determination of imazethapyr in/on canola seed. Method M-2261 may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no Codex maximum residue levels established or proposed for residues of imazethapyr on nongrass animal feeds or canola.

C. Conditions

The following will be imposed as conditions of registration for application of imazethapyr to nongrass animal feed crop group: submission of clover residue data from Region 2 (n=1), Region 7 (n=1), and Region 8 (n=1), successful radiovalidation of the livestock enforcement method, and submission of an acceptable ruminant feeding study.

The following will be imposed as conditions of registration for application of imazethapyr to canola seed: Submission of supplementary information for the canola field trial samples collected as part of report RES 95–112 (MRID 45409201; errors in sample tracking table, missing information pertaining to application/harvest, interval from harvest to frozen storage, and/or conditions/mode of transport).

V. Conclusion

Therefore, tolerances are established for the combined residues of imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, and its metabolites 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid and 5-[1-(beta-D-glucopyranosyloxy)ethyl]-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid, applied as its free acid or ammonium salt, in or on nongrass animal feed forage group at 3.0 ppm and in/on nongrass animal feed hay group at 5.5 ppm, and additional tolerances of 0.15 ppm for alfalfa seed and alfalfa seed screenings.

Additionally, a tolerance is established for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, applied as its free acid or ammonium salt, in or on canola seed at 0.10 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0032 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 20, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0032, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register.** This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 11, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.447 is amended by removing the entries for ''Alfalfa forage'' and ''Alfalfa hay'' from the table in paragraph (a)(2), and by alphabetically adding new entries to the tables in paragraphs (a)(1) and (a)(2) to read as follows:

§ 180.447 Imazethapyr; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Canola, seed[1]	0.10
* * * * *	

1 There are no U.S. registrations for canola as of March 21, 2003.

(2) * * *

Commodity	Parts per million
Alfalfa, seed	0.15
Alfalfa, seed screening	0.15
Animal feed, nongrass, group, forage	3.0
Animal feed, nongrass, group, hay	5.5
* * * * *	

* * * * *

[FR Doc. 03–6824 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 68

[FCC 02–104]

Amendment of the Commission's Rules To Reflect the Commission's Recent Reorganization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules pertaining to agency organization, procedure, and practice to reflect the Commission's *Report and Order* that privatized and streamlined the standards development and approval processes for terminal equipment regulated under part 68, and the Commission's *Order* that transferred enforcement of part 68 rules to the Enforcement Bureau.

DATES: Effective March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Gayle Radley Teicher, Industry Analysis and Technology Division, Wireline Competition Bureau, voice 202–418–0940, fax 202–418–0520.

SUPPLEMENTARY INFORMATION: By this Order, the Federal Communications Commission (Commission) amends parts 0 and 68 of its rules to reflect the Commission's *Report and Order,* 66 FR 7579, January 24, 2001 that privatized and streamlined the standards development and approval processes for terminal equipment regulated under part 68, and the Commission's *Order,* 67 FR 13216, March 21, 2002 that transferred enforcement of part 68 rules to the Enforcement Bureau. Specifically, the Commission eliminates § 0.303 to reflect the transfer of authority for part 68 terminal equipment certification to private industry. In addition, the Commission amends § 0.91 to acknowledge the changed role of the Commission in the equipment certification process. Finally, the Commission amends certain additional rules to reflect the Commission's recent transfer of responsibility for enforcement regarding terminal equipment to the Enforcement Bureau.

In the part 68 Report and Order, the Commission eliminated significant portions of the rules governing the connection of customer premises equipment (or terminal equipment) to the public switched telephone network (PSTN). The part 68 Report and Order privatized the certification of terminal equipment and the development of technical criteria with which terminal equipment must comply to be connected with the PSTN. By these actions, the Commission minimized or eliminated the role of the federal government in these processes. Therefore, it is no longer necessary to delegate authority to the Wireline Competition Bureau to act upon applications for certification of terminal equipment, and the Commission eliminates § 0.303 accordingly. The Commission modifies § 0.91, however, to reflect that the Wireline Competition Bureau retains authority to consider appeals resulting from any failure of private industry to resolve issues pertaining to technical criteria for part 68 terminal equipment.

In light of recent transfer of part 68 enforcement responsibility to the Enforcement Bureau, the Commission also eliminates the specific part 68 complaint rules. Formal complaints against carriers for violations of part 68 will now be handled pursuant to the general rules regarding formal complaints against common carriers. This action will bring adjudication of such complaints into conformity with the Commission's other rules regarding complaints against common carriers. These rules will also apply to formal complaints against common carriers regarding hearing aid compatibility and volume control requirements. The Commission also amends § 68.211 of the rules to reflect that revocation of part 68 certification will now be handled by the Enforcement Bureau.

Procedural Matters

The modifications to parts 0 and 68 undertaken by this Order are rules that pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act are inapplicable.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to section 5 of the Communications Act of 1934, as amended, 47 U.S.C. 155, parts 0 and 68 of the Commission's rules *are amended* effective March 21, 2003.

List of Subjects

47 CFR Part 0

Organization and functions, Reporting and recordkeeping requirements.

47 CFR Part 68

Administrative practice and procedures, Communications common carriers, Telecommunications, Enforcement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 68 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as mended; 47 U.S.C. 155.

2. Section 0.91 is amended by redesignating paragraphs (j) through (l) as paragraphs (k) through (m) and by adding new paragraph (j) to read as follows:

§ 0.91 Wireline Competition Bureau.

* * * * *

(j) Act on petitions for *de novo* review of decisions of the Administrative Council for Terminal Attachments regarding technical criteria pursuant to § 68.614.

* * * * *

§ 0.303 [Removed and Reserved]

3. Section 0.303 is removed and reserved.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

4. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 155 and 303.

5. Section 68.211 is amended by revising paragraph (b) to read as follows:

§ 68.211 Terminal equipment approval revocation procedures.

* * * * *

(b) *Notice of intent to Revoke Interconnection Authority.* Before revoking interconnection authority under the provisions of this section, the Commission, or the Enforcement Bureau under delegated authority, will issue a written Notice of Intent to Revoke Part 68 Interconnection Authority, or a Joint Notice of Apparent Liability for Forfeiture and Notice of Intent to Revoke Part 68 Interconnection Authority pursuant to §§ 1.80 and 1.89 of this chapter.

* * * * *

§§ 68.400 through 68.412 [Removed and Reserved]

6. Sections 68.400 through 68.412 are removed and reserved.

[FR Doc. 03–6781 Filed 3–20–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184, MM 92–260; FCC 03–9]

RIN 4105

Telecommunications Services Inside Wiring Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises rules which the Commission adopted relating to cable home run wiring. This document also resolves issues raised by the Commission regarding exclusive and perpetual contracts and related matters.

DATES: Effective May 20, 2003 except for §§ 76.620, 76.802, and 76.804 which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for the modifications to these sections. Written comments by the public on the new and/or modified information collection(s) are due May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Kornegay, Media Bureau at (202) 418–7200 or via Internet at ckornega@fcc.gov; or Wanda Hardy, Media Bureau, (202) 418–2129. For additional information concerning the information collections contained in this document, contact Les Smith at (202) 418–0217, or via the Internet at lesmith@fcc.gov. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document is a summary of the Commission's First Order on Reconsideration and Second Report and Order (''*Order*'' and ''*2nd R&O*''); CS 95–184, MM 92–260, FCC 03–9, adopted January 21, 2003 and released January 29, 2003. This document revises rules which the Commission adopted in the Report and Order and Second Further Notice of Proposed Rulemaking; 62 FR 61016, November 14, 1997, (''*R&O*'' and ''*2nd FNPRM*''); concerning cable home run wiring. The rules adopted by the Commission established specific procedural mechanisms requiring the sale, removal or abandonment of home run wiring in multiple dwelling unit buildings. This document addresses the eight petitions for reconsideration and ten oppositions or responses to the petitions for reconsideration received by the Commission in response to the Report and Order. This document also resolves issues raised by the Commission in the *2nd FNPRM* relating to (1) exclusive and perpetual contracts; (2) the application of cable home wiring and subscriber termination rights to non-cable and cable MVPDs; (3) the exemption of small MVPDs from the annual signal leakage requirements; and (4) a proposal to establish a virtual demarcation point from which alternative providers could share cable wiring. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via Internet at *http://www.fcc.gov/mb/*.

Paperwork Reduction Act: This Order contains new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Order and required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due May 20, 2003.

Synopsis of First Order on Reconsideration

Legal Authority of the Commission

1. Several petitioners questioned the Commission's authority to regulate the disposition of cable home run wiring in the first instance. We considered these arguments at length previously in the *R&O* and concluded that the Commission has authority under section 4(i) and 303(r) of the Communications Act of 1934 (''Communications Act''), in conjunction with the pervasive regulatory authority committed to the Commission under Title VI, and particularly section 623, to establish procedures for the disposition of MDU home run wiring upon termination of service.

Application of Building-by-Building Disposition Procedures

2. The *R&O* adopted procedures for two categories of home run wiring disposition: building-by-building and unit-by-unit. A multiple dwelling unit (''MDU'') owner may invoke the building-by-building disposition procedures when the incumbent multichannel video programming distributors (''MVPD'') owns the home run wiring, but no longer has a legally enforceable right to remain in the building and the MDU owner wants to use that wiring for service from another provider. A MDU owner may invoke the unit-by-unit disposition procedures when the incumbent MVPD owns the

home run wiring, but no longer has a legally enforceable right to maintain its home run wiring dedicated to a particular unit or units, and the MDU owner wants to permit multiple service providers to compete to serve individual units in the building and to use the existing wiring.

3. At least one petitioner suggested that the Commission's home run wiring disposition procedures should only apply where an MDU owner agrees to allow unit-by-unit competition and not where the owner seeks to contract with a new MVPD to serve the entire building. As we concluded in the *R&O*, this proposal wrongly assumes that any MVPD that serves the entire building has the ability to act like an entrenched monopolist, without regard to the quality and quantity of the video service provided. We observed in the *R&O* that MVPDs competing for the right to serve the building will have to offer the mix of video service, quality, quantity and price that will best help the MDU owner compete in the marketplace.

Control of Home Run Wiring

4. Both the building-by-building and unit-by-unit home run wiring disposition procedures allow the MDU owner, rather than individual subscribers, the option to acquire the home run wiring of a departing MVPD. In the *R&O* the Commission addressed comments from at least six other parties contending that MDU owners do not act in the best interest of residents and therefore should not have the authority to choose among service providers. The Commission concluded in the *R&O* that many MDU owners are tenant-based condominium associations and cooperative boards that cannot be presumed to be non-representative of their tenant's interests. The Commission also concluded that the property owner should have the ability to control the wiring because the property owner is responsible for the common areas of a building. The Commission noted that property owners have safety and security responsibilities, maintain compliance with building and electrical codes, maintain the aesthetics of the building, and balance the concerns of the residents. The Commission concludes in the Order that considerations of fairness and efficiency persuade it to leave the rules addressing control of home run wiring rules intact.

Removal of Wiring by Incumbent Providers

5. Several petitioners asked the Commission either to eliminate entirely an incumbent operator's option to remove its home run wiring or to qualify that option by requiring the incumbent to first offer to sell the wiring to the MDU owner or an alternative MVPD at replacement cost or salvage value. The Commission concludes in the *R&O* that the record in this proceeding reveals almost no concrete examples of incumbents removing their wiring rather than abandoning or selling it. The Commission is not inclined to make a decision to qualify or eliminate an incumbent's right to remove its property without a compelling record of the need to do so. Also, because the record contains no concrete examples of incumbent operators engaging in pricing activities that the negotiation and arbitration process cannot accommodate, the Commission declined to require an incumbent that elects to sell its home run wiring to do so at replacement cost or salvage value.

Arbitration/Independent Pricing Experts

6. A petitioner asked the Commission to require MDU owners to agree to purchase the home run wiring at a price set through binding arbitration as a precondition to entering into negotiations with the incumbent regarding the sale price of the wiring. The record provides no evidence that MDUs have not or would not bargain in good faith under the current rules. We question whether a commitment by the parties to engage in binding arbitration prior to the onset of negotiations will improve the chances for successful negotiations. Instead such a requirement could act as a disincentive for MDU owners to invoke the inside wiring rules. We will not adopt the petitioner's proposal to impose upon the MDU owner an obligation to purchase home run wiring once an incumbent has elected to sell it.

MDU Owner Compensation

7. Several petitioners argue that MDU owner decisions are improperly influenced by the level of consideration offered by an MVPD to the MDU owner, rather than by which MVPD offers the widest array of programming, most attractive prices, or best customer service. These petitioners contend that the Commission's home run wiring disposition rules should not apply in any situation where the owner has received any form of excess. As we determined in the *R&O,* the petitioners have not suggested definitions or guidelines as to what they consider ''excessive'' and have produced no evidence that such payments have resulted in competitive harm. We are unable to conclude that such payments are anti-competitive and warrant exclusion of MDU owners who accept them from the protection of the inside wiring rules.

Notice Period and Transition Period for the Unit-by-Unit Disposition Procedures

8. In the *R&O* the Commission recognized that MDU owners may permit service providers to compete head-to-head in a building for the right to use the individual home run wires dedicated to each unit in an MDU. Our unit-by-unit disposition procedures apply when the incumbent service provider does not have (or will not have at the conclusion of the notice period) the right to maintain its home run wiring dedicated to a particular unit in an MDU. If the MDU owner wishes to permit alternative MVPDs to compete for the right to use the individual home run wires dedicated to each unit, the MDU owner must give the incumbent 60 days written notice that it intends to invoke the home run wiring procedures. The incumbent will then have, with respect to all of the incumbent's home run wiring in the MDU, 30 days to elect to remove, abandon or sell the wiring dedicated to individual subscribers who may subsequently choose the alternative MVPD's service. Several petitioners argued that the 60-day notice period is inordinately long. They suggest that the notice period will discourage vigorous unit-by-unit competition by allowing incumbents time to develop a competitive counterattack in response to the arrival of an alternative MVPD, to reprice or restructure their service offerings and to lock individual subscribers into long-term service contracts.

9. On reconsideration, we are not convinced that a notice period for unit-by-unit transitions of less than 60 days would allow enough time to facilitate a smooth and timely transition when an alternative provider enters a building. The procedures adopted in the *R&O* are intended to provide all parties sufficient notice and certainty regarding how existing home run wiring will be made available to the alternative MVPD so that a change in service can be made efficiently. While a 60 day notice period may provide an opportunity for the incumbent to organize a competitive response to the alternative provider's service offering, we have no reason to believe the incumbent will necessarily have a market advantage over the alternative provider. The incumbent has an existing relationship with its subscribers, but that relationship may not be a positive one. Where subscribers are eager to obtain the services of an alternative provider, due in part to the failings of the incumbent, the existing relationship may hurt rather than help

the incumbent. Where subscribers are more than satisfied with the service provided by the incumbent, that existing relationship should help the incumbent in its efforts to retain subscribers to retain subscribers in the face of an alternative provider's competitive efforts. Beyond the fact of an existing relationship, an alternative provider possesses many of the same competitive tools available to the incumbent, such as pricing and designing service offering attractively and attempting to induce subscribers to enter into long term contracts. We decline to shorten the notice period.

10. A petitioner suggests that in cases where the incumbent has elected to sell or abandon its home run wire, our rules should be modified to eliminate an existing ambiguity with respect to when the incumbent provider will make the home run wiring accessible to the alternative provider. The current rule provides that such access will be provided to the alternative provider ''within 24 hours of actual service termination.''

11. We agree that the requirement as it is presently written is ambiguous. Accordingly, we will amend § 76.804 of our rules to provide that where the MDU owner or the alternative provider chooses to purchase the home run wiring, the incumbent must provide access during the 24-hour period prior to actual service termination to enable the new provider to avoid a break in service.

Unauthorized Transfer of Customers

12. A petitioner urges the Commission to amend its home run wiring rules to include an express prohibition against unauthorized customer transfers. Another petitioner contends that such rule modifications are not necessary because MVPD service does not present the same opportunities for ''slamming'' or the unauthorized transfer of customers, as telephone service transfers. The Commission is not aware of any unauthorized transfer complaints filed within the more than four years that the home run wiring disposition rules have been in effect. Absent such complaints, we find no basis for modifying our rules.

Mandatory Access

13. Mandatory access laws generally provide franchised cable operators with a legal right to install and maintain cable wiring in MDU buildings, even over MDU owners' objections. Mandatory access statutes were generally enacted to ensure that MDU tenants would have cable programming service and to prevent MDU owners from denying access based on aesthetic or other considerations.

14. We continue to believe that mandatory access laws may impede competition in the MDU marketplace and that they tend to preclude alternative (non-cable) MVPDs from executing MDU contracts. This is due to the fact that most mandatory access laws give the franchised cable operator a legal right to wire and remain in an MDU. The predictable result is that competitive providers are less likely to take the financial risk of entering, or to secure the necessary financial backing to enter the MDU marketplace in a mandatory access state. While we recognize the negative impact that mandatory access statues can have, we cannot ignore the possibility that, but for the existence of mandatory access statutes, some MDU owners would refuse to allow their buildings to be wired for cable programming. Federal preemption of mandatory access laws could, conceivably, leave some MDU tenants without access to non-broadcast video programming altogether. We will retain our conclusion in the *R&O* that we can not support federal preemption of state mandatory access rules at this time.

Signal Leakage

15. In the *R&O,* the Commission adopted a rule extending the signal leakage requirements to MVPD providers other than cable systems, including telephone companies and other telecommunications service providers that deliver video service. The Commission granted a five-year exemption from these requirements, however, for non-cable MVPDS that were ''substantially built'' as of January 1, 1998, in order to allow those MVPDs sufficient time to bring themselves into compliance. ''Substantially built'' was defined as having 75% of the distribution plant completed.

16. A petitioner suggested that we adopt a rule providing that a wireless cable system is ''substantially built,'' for purposes of the five year exemption form our signal leakage testing and reporting requirements, when its headend/transmitter facilities are constructed and operational. We reject this proposal. We note that the headend and transmitter of a wireless cable plant do not constitute distribution plant. The receiver and down-converter and associated cable strand, amplifiers, etc., constitute distribution plant subject to signal leakage. It is the deployment of such equipment that is relevant for purposes of the exemption.

Sharing of Molding

17. In the *R&O,* the Commission adopted a rule permitting an alternative MVPD to install its wiring within an incumbent cable operator's existing molding, even over the incumbent's objection, where the MDU owner agrees that there is adequate space in the molding and the MDU owner gives its affirmative consent.

18. A petitioner argues that our rule effects an unconstitutional taking of private property where an incumbent provider owns the molding or has contracted with the MDU owner for the exclusive right to occupy the moldings or conduits. The Commission's rule does not apply where the incumbent has an exclusive contractual right to occupy the molding or where the incumbent has contracted for the right to maintain its molding on the MDU property without alteration by the MDU owner. Accordingly, our rule does not interfere with the incumbent's property rights and does not constitute a taking, and, therefore, no compensation need be paid.

MDU Demarcation Point

19. Our rules prohibit an incumbent MVPD from interfering with a competitor's access to existing MDU wiring at the demarcation point. The demarcation point for MDU installations is defined as ''a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, or where the wire is physically inaccessible at such point, the closest practicable point thereto that does not require access to the individual subscriber's dwelling unit. A location is ''physically inaccessible'' when accessing the wire at that point ''would require significant modification of, or significant damage to, preexisting structural elements, and would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring. The rule provides examples of wiring that is ''physically inaccessible,'' such as ''wiring embedded in brick, metal conduit or cinder blocks with limited or without access openings.''

20. In the *R&O,* the Commission considered and rejected various proposals to relocate the demarcation point. Location of the demarcation point is significant because, under our rules, the demarcation point is the place where competing providers may access existing home wiring in an MDU building. A demarcation point that allows relatively unimpeded access to existing wire is likely to foster

competitive entry into the MDU marketplace.

21. We conclude that cable wiring behind sheet rock is ''physically inaccessible'' as that term is used in 47 CFR 76.5(mm)(4) of the Commission's rules. As stated, our rule defines ''physically inaccessible'' as ''require[ing] significant modification of, or significant damage to, preexisting structural elements.'' We believe that the term ''structural elements'' encompasses sheet rock, otherwise known as wallboard. The ''Note'' appended to § 76.5(mm)(4), which helps define ''inaccessibility,'' states that ''wiring embedded in brick, metal conduit or under cinder blocks with limited or without access openings would likely be physically inaccessible; wiring within hallway molding would not.'' Sheet rock and other similar materials are not identified specifically. In our view, sheet rock is more like ''brick or cinder block,'' materials also commonly used to form ceilings and hallways, than molding, which is not.

22. The definition of ''physically inaccessible'' also requires that accessing the wiring at that point would ''add significantly to the physical difficulty and/or cost'' of connecting. While we acknowledge that cutting a hole through and repairing sheet rock is neither as physically difficult nor as costly as boring through brick, metal or cinder block, we are satisfied that it adds significantly to the physical difficulty and cost of wiring an MDU. For this reason we conclude that wiring that is hidden behind the sheet rock in an MDU wall or ceiling is ''physically inaccessible'' as the term is used in the Commission's rule. We will amend the ''Note'' appended to § 76.5(mm)(4) to include sheet rock.

Open Video System Providers

23. In the 1996 Act, Congress recognized the open video system (OVS) as a means by which a local exchange carrier may provide cable service to subscribers within its telephone service area. Although subject to streamlined regulation as compared to their cable counterparts, OVS operators have clearly defined obligations and responsibilities, such as offering up to two-thirds of their channel capacity to unaffiliated programmers on a non-discriminatory basis.

24. A petitioner argues that OVS operators should not be able to avail themselves of the home run wiring rules because OVS operators have no basis to claim a right to use pre-existing MDU home run wiring. The petitioner submits that OVS operators are legally required to construct end-to-end facilities all the way to end user MDU residents. OVS operators, the petitioner concludes, have an obligation to construct end-to-end facilities to the demarcation point of each subscriber residence and MDU unit within its service area. Yet the statute prohibits an OVS operator provider from consuming all capacity with affiliated programming, and whether the OVS operator acquires existing home run wiring in an MDU or installs the wiring itself is irrelevant to the question of statutory compliance.

25. It is not clear how an OVS operator's obligation to carry affiliated and nonaffiliated programming on a non-discriminatory basis would interfere with the operator's eligibility to avail itself of the home run wiring rules. The petitioner assumes an OVS provider will consume all capacity with affiliated programming, and that, in some way, a requirement that OVS operators must install new home wiring in MDUs will prevent that from happening. Yet the statute prohibits an OVS provider from consuming all capacity with affiliated programming, and whether the OVS operator acquires existing home run wiring in an MDU or installs the wiring itself is irrelevant to the question of statutory compliance.

Synopsis of Second Report and Order

Background

1. In the *R&O,* the Commission amended its cable television inside wiring rules for the purpose of facilitating competition in video distribution markets. The new rules were intended to foster opportunities for multichannel video programming distributors (''MVPDs'') to provide service in multiple dwelling units (''MDU'') by establishing procedures regarding how and under what circumstances the existing cable home run wiring would be made available to alternative service providers.

2. In the *2nd R&O*; the Commission declined to restrict exclusive contracts for the provision of video services in multiple dwelling unit buildings (''MDU''). The Commission also declined to ban perpetual contracts for the provision of video services in MDUs or subject such contracts to a fresh look window. The Commission concluded that the cable home wiring and cable home run wiring rules should apply to all multichannel video programming distributors (''MVPDs'') in the same manner that they currently apply to cable operators. The Commission adopted a limited exemption for small non-cable MVPDs from its signal leakage reporting requirements but declined to allow MDU owners to require sharing of incumbent-owned cable wiring.

Exclusive and Perpetual MDU Contracts

3. Exclusive and perpetual contracts between MDU owners and MVPDs grant incumbent MVPDs the legal right to remain on MDU properties and thus limit application of the Commission's inside wiring rules. Exclusive contracts generally refer to those contracts that specify that, for a designated term, only a particular MVPD and no other provider may provide video programming and related services to residents of an MDU. Perpetual contracts generally refer to those contracts that grant the incumbent provider the right to maintain its wiring and provide service to the MDU for indefinite or very long periods of time, or for the duration of the cable franchise term, and any extensions thereof.

4. Commenters noted that most long-term exclusive and perpetual MDU contracts were executed at a time when local competition for the provision of multi-channel video programming was scarce or non-existent. As the Commission has observed, recent advancements in video and communications technology have contributed toward a more dynamic, evolving marketplace with cable and new alternative providers competing for MDU subscribers. It appears that some property owners who might now prefer to choose other providers' services may be bound by exclusive or perpetual contracts.

5. In the *2nd FNPRM,* the Commission recognized that exclusive contracts for video services in MDUs may have competitive consequences. Exclusive contracts could bar alternative MVPDs access to, and thus inhibit competition for MDUs. The Commission also noted arguments that exclusive contracts enable alternative providers to recoup the investment required to enter MDUs and thus to become or remain viable. The Commission asked commenters to address whether it would be appropriate to cap exclusive contracts to open up MDUs to potential competition on a building-wide or unit-to-unit basis, and if so, what would represent a reasonable cap.

6. Commenters identified with real estate interests, private cable operators and some telecommunications entities tend to support exclusive contracts for video programming services as enabling alternative MVPDs to gain a foothold in the MDU market. These commenters generally advocated long-term or no caps on exclusive contracts. Other commenters were critical of exclusive

contracts and proposed, if they were to be permitted at all, very short caps of three to five years.

7. We find that the record does not support a prohibition on exclusive contracts for video services in MDUs, nor a time limit, in the nature of a cap, for such contracts. The parties have identified both pro-competitive and anti-competitive aspects of exclusive contracts. We cannot state, based on the record that exclusive contracts are predominantly anti-competitive. With respect to capping such contracts, there appears to be little agreement over the length of the term. Again, based on the record, we cannot discern the ''correct'' length. We note that competition in MDU market is improving, even with the existence of exclusive contracts.

Perpetual Contracts

8. The *2nd FNPRM* also sought comment regarding whether it would be appropriate to restrict perpetual contracts between MDU owners and MVPDs. Although several commenters question the Commission's authority to act in this area, most commenters addressing the issue assert that perpetual contracts effectively bar alternative and/or new MVPDs entry into the MDU market and are inherently anti-competitive. Nonetheless, the record does not demonstrate the existence of widespread perpetual contracts nor support the need for government interference at this time.

9. The majority of commenters that urged the Commission to restrict perpetual MDU contracts offered only conclusory statements regarding the prevalence of such contracts in the marketplace. One commenter submitted the results of a survey in which it solicited responses from a cross section of MDU owners on issues relating to perpetual contracts. The survey suggests that only a small percentage of MDUs are currently subject to perpetual contracts for video programming services.

10. Given the results of the survey and the lack of other data reflecting the prevalence of perpetual contracts, we cannot conclude that such contracts represent a barrier to competition in the MDU market. Accordingly, we do not find that the current record provides a basis for restricting perpetual contracts.

Application of Cable Inside Wiring to All MVPDs

11. In the *2nd FNPRM,* the Commission proposed to modify its rules governing home wiring for single-unit installations and subscribers' pre-termination rights, so that they would apply to non-cable MVPDs, in addition to cable MVPDs. The Commission suggested that such modifications ''would promote competitive parity and facilitate the ability of a subscriber whose premises was initially wired by a non-cable MVPD to change providers.'' The Commission opined that the modifications would ''promote the same consumer benefits as in the cable context: Increased competition and consumer choice, lower prices and greater technological innovation. The Commission sought comment on the proposal to extend its rules to all MVPDs and on its authority to do so.

12. The trend in recent years has been increased competition in the MVPD market. The Commission anticipates this trend to continue with alternative MVPDs increasingly gaining market share, such that the entity responsible for the initial installation in a home could be a cable or a non-cable provider. We find it necessary to broaden our rules to ensure that a subscriber's ability to terminate existing service and accept alternative service is not contingent on whether the wiring was installed by a cable, as opposed to a non-cable provider. We further find that the proposed rule modifications will promote regulatory parity and enhance competition among MVPDs. We will modify our rules governing the disposition of home wiring and subscriber pre-termination rights to apply uniformly to all MVPDs.

Exemption From Signal Leakage Reporting Requirements

13. In the *R&O,* we extended the application of our signal leakage rules, which had applied only to traditional cable operators, to non-cable MVPDs such as satellite master antenna service (''SMATV''), MMDS, and open video system (''OVS'') operators. A transition period for compliance was established for certain non-cable MVPDs. In particular, all non-cable MVPDs were directed to comply with the reporting requirement set forth in CFR 76.1804(g) by January 1, 2003. In the *2nd FNPRM,* we sought comment on whether we should exempt small MVPDs, including small cable operators, from these requirements. Section 76.1804(g) of the Commission's rules requires cable operators to file annually with the Commission certain information relating to their use of the aeronautical radio frequency bands. We sought comments in an effort to determine whether the annual reporting requirement may impose undue burdens on small service providers, including small cable operators.

14. Supporters of a reporting exemption for small MVPDs argue that an exemption would be consistent with congressional directives to reduce regulatory burdens on small MVPDs where feasible. They argue that there is no evidence that a small MVPD exemption will result in abuses of the signal leakage rules or otherwise prompt small MVPDs to be less attentive to their signal leakage obligations. Opponents of an exemption argue that the proposal does not relieve MVPDs of the obligation to conduct tests and that the filing of signal leakage test results is a simple task once the testing is complete. They state that the signal leakage rules represent a Commission effort to protect life and property, and, if reporting is helpful in the oversight of signal leakage, then all MVPDs should report.

15. We will adopt a very limited exemption to the annual reporting requirement of CFR 76.1804(g) of our rules. This exemption will apply to non-cable MVPDs with less than 1000 subscribers or serving less than 1000 units. Such an exemption furthers congressional directives to reduce the regulatory burden on small entities where feasible. We have no reason to believe that such an exemption will affect enforcement of the Commission's signal leakage rules. We are not exempting MVPDs subject to existing reporting requirements. The annual reporting requirement is scheduled to become effective for all non-cable MVPDs on January 1, 2003. With this exemption, that requirement will not become effective for the smallest non-cable MVPDs. Relief from the annual reporting requirement will allow small non-cable MVPDs to focus on the prevention of leaks by devoting their scarce resources primarily to maintenance, leakage detection, and repair. The exempted systems will continue to perform all signal leakage tests required by our rules and must make the results of those tests available to Commission agents upon request. We believe it is sensible to treat small cable and non-cable MVPDs differently in this regard because of the different environments in which each is likely to operate. Small cable systems have wiring that connects individual residences, is strung on utility poles, and is subject to all of the stresses associated with the outside environment, including temperature fluctuations, wind loading, rain and ice. Small non-cable MVPDs predominately serve MDUs and thus have their wiring and associated electronics protected from exposure to the weather and the risk of damage that could result in signal leakage.

16. Testing will remain an important part of our enforcement program. It is

only the future obligation to report results by the smallest non-cable MVPDs which are changing here. Our signal leakage monitoring and enforcement program, conducted pursuant to CFR 76.613, which includes a vigorous program of field inspections and the impositions of forfeitures, remains unaffected. The Commission's field operations staff conducts routine monitoring for signal leakage and, of course, will continue to respond to aeronautical complaints to ensure the safe operation of aeronautical frequencies.

Simultaneous Use of Cable Home Run Wiring

In the Second Further Notice, we solicited comments on whether we should adopt a proposal from DirecTV to give MDU owners the right to require that incumbent MVPDs allow competitors to share their home run wiring. Most of the comments we received on this issue agree that there are significant unresolved technical problems with the proposal, notwithstanding its merits from a public policy perspective. Most of the technical objections to the DirecTV proposal relate to the possibility of interference when amplified signals are transmitted on a single wire and the possible lack of bandwidth capacity in existing cable plant. We are unable to resolve this issue based on the record before us. Accordingly we decline to adopt DirecTV's line sharing proposal at this time

Ordering Clauses

26. Pursuant to the authority granted in sections 1, 4(i), 201–205, 214–215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 220, 303, 544 and 552, the petitions for reconsideration filed in response to the *R&O* are *granted in part* and *denied in part,* as provided herein.

27. Pursuant to the authority granted in sections 1, 4(i), 201–205, 214–215, 220, 303, 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 214–215, 220, 303, 543, 544 and 552, the modifications to the Commission's rules are *hereby adopted.* These modifications shall become effective May 20, 2003.

List of Subjects in 47 CFR Parts 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is amended by revising the note to paragraph (mm)(4) to read as follows:

§ 76.5 Definitions.

* * * * *

(mm) * * *

(4) * * *

Note to § 76.5 Paragraph (mm)(4): For example, wiring embedded in brick, metal conduit, cinder blocks, or sheet rock with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

* * * * *

3. Section 76.620 is amended by revising paragraph (a) to read as follows:

§ 76.620 Non-cable multichannel video programming distributors (MVPDs).

(a) Sections 76.605(a)(12), 76.610, 76.611, 76.612, 76.614, 76.1804(a) through (f), 76.616, and 76.617 shall apply to all non-cable MVPDs. However, non-cable MVPD systems that are substantially built as of January 1, 1998 shall not be subject to these sections until January 1, 2003. ''Substantially built'' shall be defined as having 75 percent of the distribution plant completed. As of January 1, 2003, § 76.1804(g) shall apply to all non-cable MVPDs serving 1000 or more subscribers or 1000 or more units.

* * * * *

4. Section 76.802 is amended by revising paragraph (l) to read as follows:

§ 76.802 Disposition of cable home wiring.

* * * * *

(l) The provisions of § 76.802 shall apply to all MVPDs in the same manner that they apply to cable operators.

5. Section 76.804 is amended by revising paragraph (b)(3) to read as follows:

§ 76.804 Disposition of home run wiring.

* * * * *

(b) * * *

(3) When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, a provider that has elected to remove its home run wiring pursuant to paragraph (b)(1) or (b)(2) of this section will have seven days to remove its home run wiring and restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period shall begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination). If the provider has elected to abandon or sell the wiring pursuant to paragraph (b)(1) or (b)(2) of this section, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider within the 24-hour period prior to actual service termination.

* * * * *

6. Section 76.806 is amended by adding a paragraph (d) to read as follows:

Section 76.806 Pre-termination access to cable home wiring.

* * * * *

(d) Section 76.806 shall apply to all MVPDs.

[FR Doc. 03–6782 Filed 3–20–03; 8:45 am]

BILLING CODE 6712–10–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket Nos. NHTSA 2000–7052 and NHTSA 2001–11111]

Anthropomorphic Test Devices; Denial of Petitions for Reconsideration Regarding the Hybrid III 3-Year Old Child and CRABI Test Dummies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: This notice denies two petitions for reconsideration submitted by Ford Motor Company. The petitions ask the agency to reconsider some aspects of final rules, adopting design and performance characteristics of the 12-month-old Child Restraint Airbag Interaction (CRABI) dummy and the 3-year-old Hybrid III child dummy. The petitioner specifically requests that the agency disregard the neck readings in certain circumstances. We are denying these petitions for two reasons. One, we believe that the neck readings do not require special or different instructions and procedures for their analysis, beyond those used for data treatment in the safety standards. Two, we feel that questions related to either the selection of injury criteria or interpretation of compliance test results should be resolved within the relevant safety standard rather than 49 CFR, part 572.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Nathaniel Beuse, Office of Crashworthiness Standards, NVS–111, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–1740. Fax: (202) 473–2629.

For legal issues: Ms. Deirdre Fujita, Office of Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

Summary of the Petitions

Ford Motor Company (Ford) petitioned the National Highway Traffic Administration (NHTSA), in a letter dated September 28, 2001, to reconsider the specifications for the CRABI dummy in 49 CFR part 572, subpart R. Specifications for the dummy were published in an August 30, 2001, final rule. Ford claimed in its petition that in rear-facing child restraints, the dummy produces unacceptably high neck extension moment readings when the neck is not substantially extended. Based on this claim, Ford asked the agency to disregard the CRABI dummy neck extension readings in certain circumstances and to specify the circumstances under which the neck extension readings would be disregarded.

On January 30, 2002, Ford submitted an additional petition for reconsideration concerning a December 13, 2001, final rule establishing the Hybrid III 3-year-old child dummy. In that petition, Ford raised nearly identical concerns as it did for the CRABI dummy.

Issues Raised in the Petitions

In the petitions, Ford expressed concerns with the CRABI and Hybrid III 3-year-old child dummies' neck responses when the dummies are tested in rear-facing child seats. Ford claimed that the dummies produce ''falsely'' high upper neck extension moments while their torsos and heads are fully supported by the support surface of the child restraint. Ford asserted that this occurs in 56 KMPH (35 MPH) full frontal rigid barrier vehicle tests. Ford believes the high neck extension moments, with practically no head translation, could also occur in compliance tests conducted pursuant to Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child restraint systems,'' and the out-of-position airbag tests specified in FMVSS No. 208, ''Occupant crash protection.'' Ford stated that their engineers disregard high neck extension moments in evaluation tests with these child dummies when the neck is not substantially extended. Ford claims that such a judgment is not practicable for complying with the relevant safety standards. Ford asked the agency to disregard the CRABI dummy neck extension readings in certain circumstances, and to specify the circumstances under which the neck extension readings would be disregarded during its compliance testing.

Analysis of Petitions

Ford claimed that both the CRABI and Hybrid III 3-year-old child dummies produce artificially high neck extension moments when the head shows no substantial translation. Ford stated that this occurs in rear facing CRABI and Hybrid III 3-year-old child dummies during 56 KMPH (35 MPH) frontal rigid barrier vehicle crash tests. Inasmuch as the Ford petition did not include any test data to support the claims, the agency reviewed its own relevant test data. The agency has very limited data with these dummies in rear facing child restraints in 56 KMPH (35 MPH) frontal barrier crashes, but does have more extensive data on these dummies in the rear facing position at other speeds. The agency's own data did not indicate any signal abnormalities that would undermine the relevance and usefulness of the CRABI and the Hybrid III 3-year-old child dummies. Subsequently, in January 2002 and again in March 2002, the agency asked Ford to provide data that would help the agency better understand Ford's assertions. Failing to receive a response, the agency approached the chairman of the Hybrid III Dummy Family Task Group of the Society of Automotive Engineers (which was instrumental in developing these dummies) to determine if such issues were raised in its discussions. The chairman of the task group found no evidence or knowledge of such concerns.

Similarly, we have examined comments to the advanced airbag final rule (65 FR 30680, Docket No. NHTSA 00–7013). Neither the comments, nor the agency's data, have suggested that the CRABI and Hybrid III 3-year-old child dummies are inappropriate for use in testing under FMVSS No. 208.

As part of on-going research, the agency previously conducted tests using the FMVSS No. 213 sled pulse and the CRABI dummy in a rear-facing child restraint. In those tests, extension moments were recorded without considerable head translation. The agency examined the test results in considerable detail. We believe that extension moments without head translation can happen in at least two situations. In the first event, the extension moments could be a result of head contact with the child restraint system (CRS) seatback before substantial translation of the dummy's torso had occurred. In this case, an extension moment in the neck can be developed when the seat back of the CRS interacts with the back of the dummy's head below its center of gravity. A shear force, caused by the CRS interacting with the head, coupled to a moment arm, can result in an extension moment at the upper neck load cell. In the second event, a moment can be generated by a frictional force caused by even a minute vertical motion of the head of the dummy that is imbedded into the CRS seat back. During the impact, the torso, as it is being pushed into the seat back cushion by inertial forces, has a tendency to ramp-up. The ramping action is resisted through the neck by the frictional force at the back of the dummy head. The two opposing

forces, coupled by the distance between the back of head and the center of the neck, can also generate a moment at the neck load cell. Accordingly, an extension moment without appreciable head translation is not an unrealistic event. Based on this review, the agency agrees with Ford that the necks of the CRABI and the Hybrid III 3-year-old child dummies could produce extension moments with little or no head translation.

NHTSA believes that injury to the neck of a child can occur without appreciable head translation under the two conditions cited above. We feel that the human neck, under the loading conditions cited above, could produce moments at the occipital condyles with little or no head-to-torso rotation or head translation. Because of this, we also believe that the neck extension measurements in the specified compliance tests do not require special or different instructions and procedures for their analysis, beyond those used for data treatment of FMVSS No. 208 and FMVSS No. 213 measurements. Furthermore, we feel that questions related to either the selection of injury criteria or interpretation of compliance test results should be resolved within the relevant safety standard rather than 49 CFR, part 572. In the FMVSS No. 213 notice of proposed rulemaking published May 1, 2002, the agency proposed a number of injury criteria to assure improved safety of children in child restraints systems. The agency will evaluate comments relative to the appropriate neck injury criteria for both the CRABI and the Hybrid III 3-year-old dummies in the context of that rulemaking.

Conclusion

For the reasons discussed above, the agency is denying both Ford petitions for reconsideration.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: March 14, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–6746 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020311051–2135–02; I.D. 022002C]

RIN 0648–AN75

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Take Mitigation Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to a final rule.

SUMMARY: This document contains a correction to a final rule that was published on June 12, 2002.

DATES: Effective March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Alvin Z. Katekaru, Pacific Islands Area Office, NMFS, 808–973–2937.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2002 (67 FR 40232), NMFS published a final rule in the **Federal Register** that implements the reasonable and prudent alternative of the March 29, 2001, Biological Opinion issued by NMFS under the Endangered Species Act. Section 660.22(ss) contains an incorrect reference.

Correction

In the rule FR Doc. 02–14749, in the issue of Wednesday, June 12, 2002(67 FR 40232), on page 40236, under (ss) on the eighth line of the first column, change ''§ 660.33(h)'' to ''§ 660.33(i)''.

Dated: March 18, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–6850 Filed 3–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 031703B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the B season allowance of the total allowable catch (TAC) of pollock specified for Statistical Area 610.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 18, 2003, through 1200 hrs, A.l.t., March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the B season directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on March 11, 2003 (68 FR 11994, March 13, 2003).

NMFS has determined that, approximately 1,500 mt of pollock remain in the B season directed fishing allowance. Therefore, in accordance with § 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the B season allowance of pollock TAC specified for Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., March 19, 2003.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the fishery, not allow the full utilization of the B season allowance of the pollock TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 17, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–6840 Filed 3–18–03; 3:52 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 031703D]

Fisheries of the Exclusive Economic Zone off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment opening the B fishing season for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 12 hours effective 1200 hrs, Alaska local time (A.l.t.), March 20, 2003, until 2400 hrs, A.l.t., March 20, 2003. This adjustment is necessary to allow the fishing industry opportunity to harvest the B season allowance of the pollock total allowable catch (TAC) in Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, A.l.t., March 20, 2003, until 2400 hrs, A.l.t., March 20, 2003. Comments must be received no later than 4:30 p.m., A.l.t., April 2, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS issued a prohibition to directed fishing for pollock effective March 10, 2003, for Statistical Area 630, in accordance with § 679.20(d)(1)(iii) (68 FR 11994, March 13, 2003).

As of March 11, 2003, 857 metric tons (mt) of pollock remain in the B season allowance of the pollock TAC in Statistical Area 630 of the GOA. Regulations at § 679.23(b) specify that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the catching capacity of vessels catching pollock for processing by the inshore component in Statistical Area 630 of the GOA is about 1,500 mt per day. The Administrator, Alaska Region, NMFS, has determined that the B season allowance of the pollock TAC could be exceeded if a 24–hour fishery were allowed to occur. NMFS is not allowing a 24–hour directed fishery in order that the seasonal allowance not be exceeded. NMFS, in accordance with § 679.25(a)(1)(i) and § 679.25(a)(2)(i), is adjusting the B fishing season for pollock in Statistical Area 630 of the GOA by opening the fishery at 1200 hrs, A.l.t., March 20, 2003 and closing the fishery at 2400 hrs, A.l.t., March 20, 2003, at which time directed fishing for pollock will be prohibited. This action has the effect of opening the fishery for 12 hours.

NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the B season allowance of the pollock TAC designated in accordance with the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003) and § 679.20(a)(5)(iii). In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., March 20, 2003, after a 12- hour opening is the least restrictive management adjustment to achieve the B season allowance of the pollock TAC. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the fishery, not allow the full utilization of the pollock TAC, and therefore reduce the public's ability to use the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the B season allowance of the pollock TAC in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to see **ADDRESSES** until April 2, 2003.

This action is required by § § 679.20 and 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 17, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–6839 Filed 3–18–03; 3:52 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 55
Friday, March 21, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–115–1]

Imported Fire Ant; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the imported fire ant regulations by adding the insecticide methoprene (Extinguish®) to the list of chemicals that are authorized for the treatment of regulated articles. This product is registered by the U.S. Environmental Protection Agency for use against the imported fire ant and has been found efficacious based on testing by the Gulfport Plant Methods Center. This action would make methoprene available for the treatment of containerized plants and field-grown woody ornamentals in the quarantined areas.

DATES: We will consider all comments that we receive on or before May 20, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–115–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–115–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–115–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC, Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1231; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. Imported fire ants are notorious hitchhikers and are readily transported long distances when articles such as soil and nursery stock are shipped outside the infested area.

The Animal and Plant Health Inspection Service (APHIS) works to prevent further imported fire ant spread by enforcing a Federal quarantine and cooperating with imported fire ant-infested States to mitigate the risks associated with the movement of regulated articles such as nursery stock and used soil-moving equipment. Also, APHIS evaluates the efficacy of regulatory treatments for preventing the artificial spread of imported fire ant and revises its regulations and procedures as necessary. APHIS works with States, industry, and other Federal agencies to develop and test promising new insecticides and biological control agents.

The regulations in ''Subpart—Imported Fire Ant'' (7 CFR 301.81 through 301.81–10, referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles from those quarantined States or areas for the purpose of preventing the artificial spread of the imported fire ant.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the appendix to the subpart, which sets forth the treatment provisions of the ''Imported Fire Ant Program Manual.''

Tests conducted by APHIS's Gulfport Plant Methods Center in Mississippi have demonstrated that the insecticide methoprene (Extinguish®) is efficacious at variable dosage rates in treating plants in containers and at 1.0–1.5 lb. (0.45–0.68 kg) bait/acre for treatment of field-grown woody ornamentals. On May 27, 1998, methoprene was registered by the U.S. Environmental Protection Agency (EPA) for use against imported fire ant in containerized plants and field-grown woody ornamentals.

Therefore, we are proposing to amend the appendix to the regulations to add the insecticide methoprene (Extinguish®) as a treatment option for certain regulated articles requiring treatment against the imported fire ant. Specifically, we would amend the appendix to the regulations by adding methoprene (Extinguish®) to:

1. The list of authorized chemicals;
2. The list of approved treatments for all nurseries within the quarantined area, to treat all exposed soil surfaces where plants are grown, potted, stored, handled, unloaded, or sold; and
3. The list of fire ant baits that may be used in combination with chlorpyrifos to treat field-grown woody ornamentals.

Miscellaneous

In addition to the proposed amendments described previously, we would also make one nonsubstantive change to the appendix to the regulations. Specifically, we would add a reference to the insecticide pyriproxyfen (Distance®) to the second sentence of the paragraph titled *Special Information* in section III.C.5 of the appendix. When pyriproxyfen was added to the appendix as an approved treatment (see 64 FR 57969–57971, published October 28, 1999), references to that product should have been added to all three sentences in the *Special*

Information paragraph, but such a reference appears only in the first and third sentences of the paragraph. We would correct that omission.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This proposed rule would amend the appendix to the imported fire ant regulations to allow the use of the insecticide methoprene (Extinguish®) against the imported fire ant. Methoprene is registered by the EPA for use against the imported fire ant in containerized plants and field-grown woody ornamentals and has been found to be efficacious against imported fire ant based on testing by the Gulfport Plant Methods Center in Mississippi.

Determining the cost to treat for imported fire ant in nursery operations is complicated because of the large number of insecticide products, varying soil conditions, and various types of nursery crops. For example, in two surveys conducted by Hall and Holloway (1994 and 1995) of 37 nursery crop growers in Texas, which represented more than half of all nursery crops produced in that State, chemical cost per treatment per acre for imported fire ant control averaged $12.10, with treatment costs representing up to 4 percent of their production cost. Almost half (47 percent) of those growers reported treating for imported fire ant and most of them reported using more than one pesticide in their operations (range=1 to 3; average=1.5) making the average cost per acre for insecticides to control imported fire ants $18.15 (*i.e.*, 1.5 × $12.10).

Methoprene (Extinguish®) would be the latest insecticide to be added to the regulations for the treatment of imported fire ant. The currently approved treatments—Fipronil (Chipco®), Pyriproxyfen (Distance®), Fenoxycarb (AWARD®), Hydramethylnon (AMDRO®), and Bifenthrin (Talstar®)—cost approximately the same in the bulk market, $5 to $12 per pound, with each pound treating 17 colonies (*i.e.*, mounds) of imported fire ant. However, any insecticide's retail price depends on the price charged by its local distributor and may vary from State to State. Although the insecticides generally do not differ greatly in price, at least some consumers can be expected to benefit from inclusion of methoprene as an alternative treatment.

Impact on Small Entities

Businesses such as nurseries that work with regulated articles are the entities most likely to be affected by this proposed rule. This proposed rule would result in a wider selection of treatment options for imported fire ant. The economic effect on affected entities would either be positive, since a wider selection of insecticides will provide greater choice, or would have no effect, if they choose not to use methoprene.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses. Based on data from the 1997 Census of Agriculture, there were 14,762 nurseries and greenhouses in the 13 States that have been affected by imported fire ant plus Puerto Rico, of which 82 to 99 percent were small entities, according to the Small Business Administration criterion of annual sales of $750,000 or less.

It is expected that the economic effect of this proposed rule on these businesses would either be positive (a wider selection of insecticides will provide greater choice) or neutral (if they choose not to use methoprene). The majority (82 to 99 percent) of firms that may potentially be affected by this proposed rule are small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In part 301, Subpart-Imported Fire Ant (§§ 301.81 through 301.81–10), the appendix to the subpart would be amended as follows:

a. In paragraph III.B., under the heading INSECTICIDES, by adding, in alphabetical order, an entry for ''Methoprene (Extinguish®)''.

b. In paragraph III.C.4., under the heading *Control,* by removing the word ''or'' immediately following the word ''(AWARD®),'' and by adding the words '', or methoprene (Extinguish®)'' immediately following the word ''(Distance®)''.

c. In paragraph III.C.5., in the paragraph titled *Material,* by removing the word ''or'' immediately following the word ''(AMDRO®),'' and by adding the words '', or methoprene (Extinguish®)'' immediately following the word ''(Distance®)''.

d. In paragraph III.C.5., in the paragraph titled *Dosage,* by removing the word ''or'' immediately following the word ''(AMDRO®),'' and by adding the words '', or methoprene (Extinguish®)'' immediately following the word ''(Distance®)''.

e. In paragraph III.C.5., in the paragraph titled *Method,* in the first and third sentences, by removing the word ''or'' immediately following the word ''(AMDRO®),'' and by adding the words '', or methoprene (Extinguish®)'' immediately following the word ''(Distance®)''.

f. In paragraph III.C.5., by amending the paragraph titled *Special Information* as follows: (i) In the first and third sentences, by removing the word ''or'' immediately following the word ''(AMDRO®)'' and by adding the words '', or methoprene (Extinguish®)'' immediately following the word ''(Distance®)''.

(ii) In the second sentence, by removing the word ''or'' immediately following the word ''(AWARD®)'' and by adding the words '', pyriproxyfen (Distance®), or methoprene (Extinguish®)'' immediately following the word ''(AMDRO®)''.

Done in Washington, DC, this 18th day of March 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–6799 Filed 3–20–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 97 and 130

[Docket No. 02–040–1]

Veterinary Services User Fees; Fees for Endorsing Export Certificates for Ruminants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fees for endorsing export health certificates by establishing a separate user fee that would cover the cost of endorsing certificates that do not require verification of tests or vaccinations for ruminants. We are proposing this change to ensure that we recover all of the costs associated with providing that service. We are also proposing to make several miscellaneous changes to clarify the existing regulations.

DATES: We will consider all comments that we receive on or before May 20, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–040–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–040–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–040–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Ms. Inez Hockaday, Acting Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning rate development, contact Ms. Kris Caraher, Accountant, User Fee Section, Financial Management Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1231; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors are contained in 9 CFR part 130. Section 130.20 lists user fees we charge for endorsing health certificates for animals, birds, or animal or nonanimal products exported from the United States. Importing countries often require these certificates to show that an animal, bird, or product has tested negative to specific animal diseases or that the animal, bird, or product has not been exposed to specific animal diseases. The endorsement indicates that APHIS has reviewed a certificate and believes it to be accurate and reliable. The steps associated with endorsing an export certificate may include reviewing supporting documentation; confirming that the importing country's requirements have been met; verifying laboratory test results for each animal if tests are required; reviewing any certification statements required by the importing country; and endorsing, or signing, the certificates. Our user fees are intended to cover all of the costs associated with endorsing the certificates.

The user fees we charge to endorse export health certificates vary, depending on whether or not the importing country requires verification of tests or vaccinations and the type and quantity of animals, birds, or products covered by the certificate. For those certificates that do not require verification of tests or vaccinations, paragraph (a) of § 130.20 lists user fees for the following certificate categories: Animal and nonanimal products; hatching eggs; poultry, including slaughter poultry; slaughter animals (except poultry) moving to Canada or Mexico; and other endorsements or certifications. For those certificates that require verification of tests or vaccinations, paragraph (b) of § 130.20 lists user fees based on the number of animals or birds and the number of tests or vaccinations on the certificate, and whether the animals covered by the certificate are nonslaughter horses moving to Canada or are other animals or birds. Currently, user fees for the endorsement of export health certificates for ruminants, except for ruminants exported for slaughter to Canada or Mexico, are included in the certificate categories ''Other endorsements or certifications'' and ''Other animals or birds'' in paragraphs (a) and (b) of § 130.20, respectively.

On August 28, 2000, we published a final rule in the **Federal Register** (65 FR 51997–52010, Docket No. 97–058–2) that amended the user fees for, among other things, the endorsement of export health certificates. We calculated the user fees established by that final rule to cover the costs associated with providing that service, which include direct labor and direct material costs.

Since the time we calculated the fees established in the August 2000 final rule, we have conducted a review of the costs of endorsing export health certificates. In that review, we found that the projected direct labor costs used to calculate the multi-year user fees for the certificate category ''Other endorsements or certifications'' in § 130.20(a) are less than the actual direct labor costs for the endorsement of certificates for ruminants, which is covered by that certificate category. As a result, the user fees charged to endorse certificates in accordance with § 130.20(a) for ruminants are less than the actual cost of providing that service. For the user fees to cover all the costs associated with endorsing such certificates for ruminants, including the direct labor costs, we propose to establish a new certificate category and user fee in § 130.20(a) for ruminants.

APHIS currently charges $23 to endorse each certificate covered by the certificate category ''Other endorsements or certifications'' in § 130.20(a). We have estimated the actual cost of providing that service for ruminants to be $33 for each endorsement; therefore, we propose to increase the current user fee charged for

such an endorsement by $10 to $33. If adopted, this proposed user fee would take effect on the effective date of the final rule for this action.

Slaughter ruminants exported to Canada or Mexico that require certification under § 130.20(a) are covered by the certificate category ''Slaughter animals (except poultry) moving to Canada or Mexico.'' To make it clear that slaughter ruminants exported to Canada or Mexico would continue to be covered by that certificate category, and not by the certificate category for ruminants proposed in this rule, we also propose to amend the title of the category for slaughter animals in § 130.20(a) to ''Slaughter animals (except poultry but including ruminants) moving to Canada or Mexico.'' Similarly, the title of the proposed new category for ruminants would read: ''Ruminants, except slaughter ruminants moving to Canada or Mexico.'' The user fees currently listed in § 130.20(a), including those fees for slaughter animals exported to Canada or Mexico, would not be affected by this proposed change.

Calculation Methodology

We calculated the user fee for endorsing export health certificates that do not require verification of tests or vaccinations for ruminants to cover the full costs associated with reviewing and endorsing a certificate. The costs of providing that service are the direct labor costs, administrative support costs, billing and collections costs, agency overhead, departmental charges, and a reserve component.

Direct labor costs are the salary and benefit costs of employee time spent specifically to endorse a certificate. To calculate the direct labor costs, we included time for a GS–14 step 5 veterinarian to provide information over the phone, research regulations, send any necessary facsimiles, and review, sign, and audit paperwork. We also included time for a GS–5 step 5 export clerk to review the contents of the certificate, print a receipt, enter and process information in the system, verify the origin and identity of the animal(s) by researching farms and matching eartags, handle collections, and mail certifications. We used the actual hourly salary of a GS–14 step 5 and a GS–5 step 5 during fiscal year (FY) 2002 (October 1, 2001, through September 30, 2002) and took into consideration the anticipated increases in the cost of living for fiscal years 2003 and 2004 that were projected in the President's Budget for FY 2003 (October 1, 2002, through September 30, 2003). Finally, we included employee benefit costs at 20.42 percent of the total employee salary costs. Based on this approach, we estimate that the direct labor cost associated with the endorsement of export health certificates that do not require verification of tests or vaccinations for ruminants is $15.12 for each certificate.

Administrative support costs include local clerical and administrative activities; indirect labor hours; travel and transportation for personnel; supplies, equipment, and other necessary items; training; general office supplies; rent; equipment capitalization; billings and collections expenses; utilities; and contractual services. Indirect labor hours include supervision of personnel and time spent doing work that is not directly connected with endorsing the certificates but which is nonetheless necessary, such as repairing equipment. Rent is the cost of using the space we need to perform work related to endorsing the certificates. Equipment capitalization is the cost per year to replace equipment, which we determine by establishing the life expectancy, in years, of equipment we use to endorse the certificates and by establishing the cost to replace the equipment at the end of its useful life. We subtract any money we anticipate receiving for selling used equipment. Then we divide the resulting amount by the life expectancy of the equipment. The result is the annual cost to replace equipment. Billing costs are the costs of managing user fee accounts for our customers who wish to receive monthly invoices for the services they receive from APHIS. Collections expenses include the costs of managing customer payments and accurately reflecting those payments in our accounting system. Utilities include water, telephone, electricity, gas, heating and oil. Contractual services include security service, maintenance, trash pickup, etc. We have calculated the administrative support costs for each endorsement to be $10.85.

Agency overhead is the pro-rata share, attributable to endorsing the certificates, of the agency's management and support costs. Management and support costs include the costs of providing budget and accounting services, regulatory services, investigative and enforcement services, debt-management services, personnel services, public information services, legal services, liaison with Congress, and other general program and agency management services provided above the local level. We have determined that $4.19 for each endorsement covers the agency overhead associated with providing that service.

Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the Department of Agriculture (Department). Services the Department provides centrally include the Federal Telephone Service; mail; National Finance Center processing of payroll, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Department forms. The Department notifies APHIS how much the agency owes for these services. We have included a pro-rata share of these departmental charges of $1.38, as attributable to the endorsement of export health certificates that do not require verification of tests or vaccinations for ruminants, in our fee calculation.

We have added an amount that would help provide for a reasonable balance, or reserve, in the Veterinary Services' (VS) user fee account. We maintain a reserve in the VS user fee account that is equal to approximately 25 percent of the annual cost of the Import/Export Program to ensure that we have sufficient operating funds in cases of bad debt, customer insolvency, and fluctuations in activity volumes. All user fees contribute to the reserve proportionately. We have included a pro-rata share of the reserve of $1.58, as attributable to each endorsement, in our fee calculation.

We added all of the costs, as discussed above, to obtain our cost of $33.12 to endorse export health certificates that do not require verification of tests or vaccinations for ruminants, except for slaughter ruminants exported to Mexico or Canada. We then rounded this cost to the nearest whole dollar to obtain a user fee of $33 for each certification. As mentioned above, if this proposed rule is adopted, the user fee for the new certificate category would take effect on the effective date of the final rule for this action. As is the case with all APHIS user fees, we intend to review, at least annually, the user fee proposed in this document. We will publish any necessary adjustments in the **Federal Register**.

We are also proposing to make several miscellaneous changes to the regulations for clarity. As mentioned above, the regulations in 9 CFR part 130 contain, among other things, tables that list multi-year user fees for certain veterinary diagnostic services and import- and export-related services. In addition to listing user fees for the current and future fiscal years (FY 2003

and beyond), many of the tables in part 130 list user fees for fiscal years 2001 and/or 2002. Because fiscal years 2001 and 2002 have passed, we believe it is no longer necessary to list the user fees for those fiscal years in the regulations. Therefore, we are proposing to amend the user fee tables in the part 130 by removing columns that list fees for fiscal years 2001 and 2002.

Similarly, we would also remove the columns for fiscal year 2002 from the overtime rates tables found in 7 CFR part 354 and 9 CFR parts 97 and 130 (those tables list multi-year overtime rates for inspection, laboratory testing, certification, or quarantine services provided by APHIS employees on a holiday, Sunday, or at any other time outside of an employee's regular tour of duty).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS charges flat-rate user fees to individuals, firms, corporations, and other entities for the endorsement of export health certificates for animals, birds, or animal or nonanimal products. These user fees vary, depending on whether or not the importing country requires verification of tests and the type and quantity of animals, birds, or products covered by the certificate. There is one user fee schedule for certificates that require verification of tests or vaccinations and another schedule for certificates that do not require such verification.

Currently, certifications for ruminants that do not require verification of tests or vaccinations, other than certifications for slaughter ruminants exported to Mexico or Canada, are covered by a miscellaneous ''catchall'' user fee certificate category. (Ruminants exported to Mexico and Canada for slaughter are covered by a separate user fee that includes all slaughter animals, except poultry, exported to those two countries). APHIS currently charges $23 per endorsement for services covered by that miscellaneous certificate category. Based on our review of the costs associated with endorsing export health certificates, we have determined that the current user fee charged for the miscellaneous certificate category does not cover all of our costs to endorse such certificates for ruminants. As a result, we are proposing to establish a new certificate category and user fee for that service. If adopted, this proposal would increase the current user fee charged to endorse certificates that do not require verification of tests or vaccinations for ruminants, except slaughter ruminants exported to Mexico or Canada, by $10 to $33 for each endorsement. We are proposing this change to ensure that we recover our costs for providing that service, which include direct labor costs, administrative support costs, billing and collection costs, Agency overhead, departmental charges, and a reserve component.

This proposed rule would affect entities who export ruminants, other than slaughter ruminants exported to Mexico or Canada, to countries that do not require that export health certificates include verification of tests or vaccinations. Because entities who export ruminants to Mexico or Canada for immediate slaughter are covered by a separate user fee category, such entities would not be affected by this proposed rule. Whether or not an importing country requires verification of tests or vaccinations for ruminants depends on such factors as the type of animal exported, the time of year exportation occurs, and the health status of an animal's herd or State of origin. A representative overview of countries that import ruminants from the United States (including Brazil, Canada, China, Dominican Republic, Japan, Mexico, Nicaragua, Philippines, and Turkey) indicates that most countries require that export health certificates include verification of testing or vaccinations for ruminants.[1] For example, importing countries almost always require U.S.-origin ruminants to be tested for brucellosis and tuberculosis, and frequently require those animals to be tested for such diseases as anaplasmosis, bluetongue, Johne's disease, leptospirosis, and vesicular stomatitis, among others. However, two countries, Mexico and Canada, do not currently require verification of tests or vaccinations for some cattle, sheep, and goats, under certain conditions.

As shown in Table 1, below, trade statistics indicate that the majority of U.S.-origin cattle, sheep, and goats are exported to Mexico and Canada. For example, 56.6 percent of purebred cattle, 99.6 percent of not purebred cattle, 99.5 percent of sheep, and 82.3 percent of goats exported from the United States during 1999–2001 were shipped to Mexico or Canada. Of those animals listed in Table 1, animals categorized as ''not purebred cattle'' (which include feeder cattle, cattle exported for immediate slaughter, and other not purebred cattle) comprise the single largest category, accounting for 83 percent of the total number of cattle, sheep, and goats exported from the United States during 1999–2001.

TABLE 1.—VALUE OF U.S. EXPORTS OF CATTLE, SHEEP, AND GOATS TO MEXICO, CANADA, AND THE REST OF THE WORLD

[Dollar amounts and percentage shares of each livestock category as annual averages for 1999–2001]

	Mexico	Canada	Rest of the world
Purebred cattle	$9.86 million (45.8%)	$2.39 million (10.8%)	$9.39 million (43.4%)
Not purebred cattle	$70.77 million (32.4%)	$145.74 million (67.2%)	$718,000 (0.4%).
Sheep	$18.00 million (97.4%)	$391,000 (2.1%)	$85,000 (0.5%).
Goats	$1.95 million (74.2%)	$206,000 (8.1%)	$487,000 (17.7%).

Source: World Trade Atlas, based on U.S. Census data.

Because Mexico and Canada are the principal markets for ruminants exported from the United States that do not require health certificates to include verification of tests or vaccinations, we can expect that entities who export cattle, sheep, and goats to those two countries would be most affected by this proposed rule. As a result, this analysis will focus on the importation requirements of Mexico and Canada for U.S.-origin cattle, sheep, and goats.

[1] Import health requirements of foreign countries, including required certification statements and testing, may be found on the Internet at *http://www.aphis.usda.gov/vs/ncie/iregs/animals/*.

U.S. Ruminant Exports to Mexico

Mexico does not require verification of tests or vaccinations for the following ruminants imported from the United States: Steers and spayed heifers shipped as feeder cattle; slaughter cattle, unless from Texas or Missouri; sheep other than rams; and goats other than breeding stock. Because Texas and Missouri are not designated as brucellosis Class-Free States, cattle imported for slaughter from those two States must be tested for that disease. Breeding cattle imported into Mexico from any State are required to be tested for brucellosis only if the animal is less than 6 months of age, or is an official calfhood vaccinate less than 20 months of age raised for dairy production or a vaccinate less than 24 months of age raised for beef. However, all breeding cattle, except for those animals under 1 month of age, must be tested for tuberculosis. For sheep and goats, Mexico requires that breeding and feeder rams be tested for brucellosis and breeding goats be tested for tuberculosis.

As mentioned above, animals other than poultry exported to Mexico and Canada for slaughter are covered by a separate user fee category. As a result, exporters of slaughter ruminants, including slaughter cattle, exported to Mexico or Canada would not be affected by this proposed rule. Slaughter cattle account for the majority of not purebred cattle exported to Mexico from the United States.[2] As shown in Table 1, the annual value of not purebred cattle exported to Mexico from the United States is estimated to be about $71 million. APHIS export certification data indicate that approximately 62 percent of not purebred cattle shipped to Mexico were exported from the United States for purposes other than slaughter.[3] We can expect, therefore, that the annual value of not purebred cattle exported to Mexico that would be affected by this proposed rule to be approximately $44 million ($70.77 million multiplied by 0.62).

This proposed rule would have a negligible economic impact on exporters of sheep and goats shipped to Mexico, as over 99 percent of sheep and 96 percent of goats from the United States to Mexico are intended for slaughter and would not, therefore, be covered by the certificate category and user fee proposed in this document.

U.S. Ruminant Exports to Canada

Ruminants exported to Canada that do not require testing or vaccination are feeder cattle from Hawaii, Montana, and Washington; sheep and goats intended for immediate slaughter; and some purebred cattle, sheep, and goats, depending on the health status of the State or herd from which the animal originated and the time of year the animals are shipped.

Canada requires feeder cattle imported from most States to be tested for tuberculosis and anaplasmosis, and requires certain feeder cattle to be tested for brucellosis and bluetongue. Brucellosis testing is not required for steers and spayed heifers and official calfhood vaccinates that were vaccinated with Strain 19 vaccine. For all other cattle, brucellosis testing requirements depend on the brucellosis status of the animal's herd and State. Currently, all States except Missouri and Texas are classified as brucellosis Class-Free. As a result, feeder cattle exported to Canada from all States except Missouri and Texas are exempt from brucellosis testing. Bluetongue test requirements depend on whether the animal comes from a low-, medium-, or high-incidence State and/or the time of year the animal is exported. For example, feeder cattle imported into Canada between October 1 and December 31 are not required to be tested for bluetongue, regardless of the State of origin.

As an alternative to the foregoing testing requirements, Canada accepts shipments of untested feeder cattle under its Restricted Feeder Cattle Program.[4] To participate in this program, a State must meet certain requirements, including being free of brucellosis and tuberculosis and classified as a low risk for bluetongue, and must submit to Canada summary data for anaplasmosis. Currently, Hawaii, Montana, and Washington are allowed to export untested feeder cattle to Canada under the Restricted Feeder Cattle Program. Cattle imported by Canada under this program may only enter the country between October 1 and March 31.

Testing requirements for breeding cattle exported to Canada depend on a given animal's particular circumstances. For example, brucellosis and anaplasmosis testing requirements depend on the health status of the herd and State, and bluetongue testing requirements depend on the State's classification and/or the time of year the animal is exported to Canada. Breeding cattle need not be tested for tuberculosis if the entire herd from which the animal originated is tested within the 12 months preceding exportation.

Sheep and goats exported to Canada for immediate slaughter need not be tested for bluetongue. For all other sheep and goats, testing for bluetongue depends on the status of the exporting State and/or the time of year of the export. For example, Canada does not require sheep and goats exported from any State between October 1 and December 31 to be tested for bluetongue, assuming that the animals have resided only in the United States or Canada.

As shown in Table 1, not purebred cattle, which predominantly consist of feeder cattle, account for the single largest category of ruminants exported to Canada that would be affected by this proposed rule. Because Hawaii, Montana, and Washington are the only States currently allowed to export feeder cattle to Canada without tests or vaccinations under the Restricted Feeder Cattle Program, we can expect that exporters of ruminants from those three States would be most affected by this proposed rule. Table 2 shows approximate average annual values of feeder cattle exported to Canada from Hawaii, Montana, and Washington, 1999–2001. These values are for cattle classified under Harmonized Schedule code 010290 (not purebred), and, therefore, may include animals exported for immediate slaughter and other not purebred animals; however, the majority of cattle under this classification are imported by Canada under its Restricted Feeder Cattle Program for feeding and subsequent slaughter.

[2] APHIS, Centers for Epidemiology & Animal Health (CEAH), 1999–2001.

[3] APHIS CEAH, 1999–2001.

[4] Canadian Food Inspection Agency, Client Services Information Sheet No. 14, Restricted Feeder Cattle from the United States.

TABLE 2.—APPROXIMATE AVERAGE ANNUAL VALUES OF FEEDER CATTLE EXPORTS TO CANADA FROM THE STATES OF HAWAII, MONTANA, AND WASHINGTON, 1999–2001

Hawaii	$2,383,000
Montana	84,999,000
Washington	8,821,000
Total	96,203,000

Source: Industry Canada, Trade Data Online, based on data obtained from Statistics Canada and the U.S. Census Bureau, U.S. Department of Commerce.

Note: Values are for Harmonized Schedule code 010290—Bovine, live—Not Pure-bred, which are predominantly feeder cattle, but may include other cattle. The values, therefore, are only approximate feeder cattle values.

Montana's livestock exporters, in particular, have benefitted from the Restricted Feeder Cattle Program. A total of 127,643 restricted feeder cattle were shipped to Canada from Montana during the 1999–2000 season. In the 2000–2001 season, Montana shipped 133,240 head.[5] The total value of feeder cattle exported from the three States to Canada, shown in Table 2 to be $96 million, comprises two-thirds of the $146 million shown in Table 1 for all not purebred cattle exported to Canada.

Statistics on other ruminants exported to Canada and affected by this proposed rule are not available. However, as mentioned above, exports of such ruminants, which include certain breeding stock, are not nearly as important as exports of not purebred cattle.

The User Fee Increase and Ruminant Export Values

The total value of ruminant exports that would be affected by this proposed rule and for which statistics are available is approximately $140 million annually. This figure accounts for about 54 percent of cattle, sheep, and goats exported from the United States.[6] However, even though a sizable percentage of U.S. ruminant exports would be affected by the proposed user fee increase, we do not expect that this proposed rule would have a significant impact on a substantial number of entities. The $10 proposed increase in user fees for the endorsement of certificates that do not require verification of tests or vaccinations for ruminants represents a small amount of the average export value of cattle. Furthermore, the $10 proposed increase in user fees is small compared to the total value of livestock usually included on a single health certificate, as most health certificates are issued for more than one animal and the new user fee of $33 would apply for any number of animals covered by a single certificate.

This proposed rule would have the largest effect on exporters of not purebred cattle intended for export to Mexico and Canada. Table 3 shows the average value for each animal for those ruminant categories. The proposed $10 increase in user fees represents approximately 2 percent of the average value of not purebred cattle exported to Mexico and Canada from the United States.

TABLE 3.—AVERAGE VALUES OF NOT PUREBRED CATTLE EXPORTED TO MEXICO AND CANADA AND PERCENTAGES OF THE VALUES REPRESENTED BY THE PROPOSED $10 INCREASE IN USER FEES

	Average value per animal	$10 user fee increase as a percentage of the average value
Not Purebred Cattle:		
Exported to Mexico	$464	2.2
Exported to Canada	504	2.0

Source: World Trade Atlas, based on U.S. Census Bureau data. Values are annual averages for 1999, 2000, and 2001.

However, these percentages overstate the potential impact of the proposed user fee increase, as numerous animals are usually exported using a single certificate. For example, from 1999 through 2001, the average number of feeder cattle exported to Canada per certificate numbered 798 head.[7] Based on this average number of cattle per certificate, the $10 proposed user fee increase would account for only 0.002 percent of the total value of livestock included in a single health certificate.[8]

Impact on Small Entities

The Regulatory Flexibility Act require agencies to consider the economic impact of their rules on small entities, such as small businesses, organizations, and governmental jurisdictions. This proposed rule would affect livestock operations that export ruminants to Mexico or Canada, which include such entities as cattle ranches and farms, sheep and goat farms, and cattle feedlots.

Under the standards established by the Small Business Administration (SBA), a business, firm, organization or other entity engaged in cattle ranching and farming, sheep farming, or goat farming is considered small if the entity has annual sales of $750,000 or less.[9] In 1997, there were 651,542 cattle farms and 29,790 sheep and goat farms. Of

[5] Montana Department of Livestock.

[6] Feeder cattle exports to Canada from Hawaii, Montana, and Washington ($96 million) + not purebred cattle exports to Mexico ($44 million) = $140 million. (Overcounting of affected cattle and smallstock shipments to Mexico is assumed to be balanced by undercounting of affected cattle and smallstock shipments to Canada.) All U.S. exports total about $260 million (Table 1).

[7] Calculated from data obtained from APHIS CEAH.

[8] Average total value of feeder cattle exported to Canada, for each health certificate, is $402,192: ($10 divided by $402,192) multiplied by 100 = 0.002 percent.

[9] Cattle ranching and farming, North American Industry Classification System (NAICS) code 112120; sheep farming, NAICS 112410; and goat farming, NAICS 112420.

those entities, 99 percent of cattle farms (656,181) and 99 percent of sheep and goat farms (29,938) are considered small entities under the SBA's standards.[10]

Cattle feedlots are considered small under the SBA's standards if their annual sales are $1.5 million or less.[11] Over 97 percent of feedlots (95,000 of 97,091) have capacities of fewer than 1,000 head, and average annual sales of about 420 head.[12] Assuming each head sold for $1,000, these fewer-than-1,000 head capacity feedlots would generate, on average, $420,000 in sales. Clearly, most feedlots that export ruminants to Mexico or Canada are also considered small entities.

The proposed $10 increase in user fees for the endorsement of ruminant export health certificates that do not require verification of testing or vaccination, except ruminants exported from Mexico or Canada, would not have a significant economic impact on a substantial number of entities, large or small, given the value and number of animals usually listed on a single health certificate. Although the majority of entities potentially affected by this proposed rule are small entities, and the majority of cattle, sheep, and goats exported by the United States do not require testing or vaccination, the proposed user fee increase is small compared to the average total value of livestock normally included on a single health certificate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 7 CFR part 354 and 9 CFR parts 97 and 130 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 would continue to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

2. Section 354.1 would be amended as follows:

a. In paragraph (a)(1), introductory text, the table would be revised to read as set forth below.

b. In paragraph (a)(1)(iii), the table would be revised to read as set forth below.

354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) * * *

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANT, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)			
	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$46.00	$48.00	$49.00	$51.00
Sundays	61.00	63.00	65.00	67.00

* * * * * (iii) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)			
	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$37.00	$39.00	$40.00	$41.00
Sundays	49.00	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

[10] 1997 Census of Agriculture, USDA National Agricultural Statistics Service (NASS). Sales information for these farms identifies a data break at annual sales of $500,000, not at $750,000.

[11] Cattle feedlots, NAICS 112112.

[12] ''Cattle on Feed,'' NASS, February 2001.

* * * * *

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

3. The authority citation for part 97 would continue to read as follows:

Authority: 7 U.S.C. 8301–8317; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.4.

4. Section 97.1 would be amended as follows:

a. In the introductory text of paragraph (a), the table would be revised to read as set forth below.

b. In paragraph (a)(3), the table would be revised to read as set forth below.

97.1 Overtime services relating to imports and exports.

(a) * * *

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)			
	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$46.00	$48.00	$49.00	$51.00
Sundays	61.00	63.00	65.00	67.00

* * * * *

(3) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)			
	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$37.00	$39.00	$40.00	$41.00
Sundays	49.00	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

* * * * *

PART 130—USER FEES

5. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

6. Section 130.2 would be amended as follows:

a. In paragraph (a), the table would be revised to read as set forth below.

b. In paragraph (b), the table would be revised to read as set forth below.

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS-owned or -operated animal quarantine facilities, including APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily user fee	
	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Birds (excluding ratites and pet birds imported in accordance with Part 93 of this subchapter):		
0–250 grams	$1.50	$1.75
251–1,000 grams	5.50	5.75
Over 1,000 grams	13.00	13.00
Domestic or zoo animals (except equines, birds, and poultry):		
Bison, bulls, camels, cattle, or zoo animals	100.00	102.00
All others, including, but not limited to, alpacas, llamas, goats, sheep, and swine	26.00	27.00
Equines (including zoo equines, but excluding miniature horses):		
1st through 3rd day (fee per day)	264.00	270.00
4th through 7th day (fee per day)	191.00	195.00
8th and subsequent days (fee per day)	162.00	166.00
Miniature horses	60.00	61.00
Poultry (including zoo poultry):		
Doves, pigeons, quail	3.25	3.50
Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	6.25	6.25
Large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys	14.00	15.00
Ratites:		
Chicks (less than 3 months old)	9.00	9.25
Juveniles (3 months through 10 months old)	14.00	14.00
Adults (11 months old and older)	26.00	27.00

(b) * * *

Bird or poultry (nonstandard housing, care, or handling)	Daily user fee	
	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Birds 0–250 grams and doves, pigeons, and quail	$5.50	$5.75
Birds 251–1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridge, pea fowl, and pheasants	13.00	13.00
Birds over 1,000 grams and large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys	25.00	25.00

* * * * *

7. In § 130.3, paragraph (a)(1), the table would be revised to read as follows:

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) * * *

Animal import center	Monthly user fee	
	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Newburgh, NY:		
Space A, 5,396 sq. ft. (503.1 sq. m.)	$57,630	$59,254
Space B, 8,903 sq. ft. (827.1 sq. m.)	95,085	97,764
Space C, 905 sq. ft. (84.1 sq. m.)	9,666	9,938

* * * * *

8. In § 130.4, the table would be revised to read as follows:

§ 130.4 User fees for processing import permit applications.

* * * * *

Service	Unit	User fee	
		Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Import compliance assistance:			
Simple (2 hours or less)	Per release	$68.00	$70.00
Complicated (more than 2 hours)	Per release	174.00	180.00
Processing an application for a permit to import live animals, animal products or byproducts, organisms, vectors, or germ plasm (embryos or semen) or to transport organisms or vectors [1]			
Initial permit	Per application	94.00	94.00
Amended permit	Per amended application	47.00	47.00
Renewed permit [2]	Per application	61.00	61.00
Processing an application for a permit to import fetal bovine serum when facility inspection is required.	Per application	322.00	322.00

[1] Using Veterinary Services Form 16–3, ''Application for Permit to Import or Transport Controlled Material or Organisms or Vectors,'' or Form 17–129, ''Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs).''

[2] Permits to import germ plasm and live animals are not renewable.

9. In § 130.6, paragraph (a), the table would be revised to read as follows:

§ 130.6 User fees for inspection of live animals at land border ports along the United States-Mexico border.

(a) * * *

Type of live animal	Per head user fee	
	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Any ruminants (including breeder ruminants) not covered below	$8.75	$9.00
Feeder	2.50	2.50
Horses, other than slaughter	43.00	44.00
In-bond or in-transit	5.50	5.75
Slaughter	3.75	3.75

* * * * *

10. In § 130.7, paragraph (a), the table would be revised to read as follows:

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) * * *

Type of live animal	Unit	User fee	
		Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Animals being imported into the United States			
Breeding animals (Grade animals, except horses):			
Sheep and goats	Per head	$0.50	$0.50
Swine	Per head	0.75	0.75
All others	Per head	3.25	3.25
Feeder animals:			
Cattle (not including calves)	Per head	1.50	1.50
Sheep and calves	Per head	0.50	0.50
Swine	Per head	0.25	0.25
Horses (including registered horses), other than slaughter and in-transit.	Per head	28.00	29.00
Poultry (including eggs), imported for any purpose	Per load	48.00	50.00
Registered animals (except horses)	Per head	5.75	6.00
Slaughter animals (except poultry)	Per load	24.00	25.00
Animals transiting[1] the United States:			
Cattle	Per head	1.50	1.50
Sheep and goats	Per head	0.25	0.25
Swine	Per head	0.25	0.25
Horses and all other animals	Per head	6.75	6.75

[1] The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee rate in § 130.30 will apply.

* * * * *

11. In § 130.8, paragraph (a), the table would be revised to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	Unit	User fee	
		Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Germ plasm being exported:[1]			
Embryo:			
Up to 5 donor pairs	Per certificate	$81.00	$83.00
Each additional group of donor pairs, up to 5 pairs per group, on the same certificate.	Per group of donor pairs	36.00	37.00
Semen	Per certificate	49.00	51.00
Release from export agricultural hold:			
Simple (2 hours or less)	Per release	68.00	70.00
Complicated (more than 2 hours)	Per release	174.00	180.00

[1] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the hourly user fee in 130.30 will apply.

* * * * *

12. Section 130.10 would be amended as follows:

a. In paragraph (a), the table would be revised to read as set forth below.

b. In paragraph (b), the table would be revised to read as set forth below.

§ 130.10 User fees for pet birds.

(a) * * *

Service	Unit	User fee	
		Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
(1) Which have been out of the United States 60 days or less	Per lot	$105.00	$108.00
(2) Which have been out of the United States more than 60 days	Per lot	250.00	257.00

(b) * * *

Number of birds in isolette	Daily user fee	
	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
1	$9.00	$9.25
2	11.00	11.00
3	13.00	13.00
4	15.00	15.00
5 or more	17.00	18.00

* * * * *

13. In § 130.11, paragraph (a), the table would be revised to read as follows:

§ 130.11 User fees for inspecting and approving import/export facilities and establishments.

(a) * * *

Service	Unit	User fee	
		Oct. 1, 2002—Sept. 30, 2003	Beginning Oct. 1, 2003
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	Per year	$369.00	$380.00
Inspection for approval of biosecurity level three laboratories (all inspections related to approving the laboratory for handling one defined set of organisms or vectors).	Per inspection	977.00	977.00
Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities:			
Initial approval	For all inspections required during the year.	404.75	404.75
Renewal	For all inspections required during the year.	289.00	289.00
Inspection for approval of pet food spraying and drying facilities:			
Initial approval	For all inspections required during the year.	275.00	275.00
Renewal	For all inspections required during the year.	162.00	162.00
Inspection for approval of slaughter establishment:			
Initial approval (all inspections)	Per year	362.00	373.00
Renewal (all inspections)	Per year	314.00	323.00
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:			
Approval (compliance agreement) (all inspections for first year of 3-year approval).	Per year	386.00	398.00
Renewed approval (all inspections for second and third years of 3-year approval).	Per year	223.00	230.00

* * * * *

14. Section 130.20 would be amended as follows:

a. In paragraph (a), the table would be revised to read as set forth below.

b. In paragraph (b)(1), the table would be revised to read as set forth below.

130.20 User fees for endorsing export certificates.

(a) * * *

Certificate categories	User fee	
	Oct. 1, 2002—Sept. 30, 2003	Beginning Oct. 1, 2003
Animal and nonanimal products	$31.00	$32.00
Hatching eggs	29.00	30.00
Poultry, including slaughter poultry	29.00	30.00
Ruminants, except slaughter ruminants	33.00	33.00
Slaughter animals (except poultry but including ruminants) moving to Canada or Mexico	34.00	35.00
Other endorsements or certifications	23.00	24.00

* * * * *

(b)(1) * * *

Number of tests or vaccinations and number of animals or birds on the certificate	User fee	
	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
1–2 tests or vaccinations:		
First animal	$74.00	$76.00
Each additional animal	4.25	4.25
3–6 tests or vaccinations:		
First animal	91.00	94.00
Each additional animal	7.00	7.25
7 or more tests or vaccinations:		
First animal	106.00	109.00
Each additional animal	8.25	8.50

* * * * *

15. Section 130.30 would be revised to read as follows:

a. In paragraph (a), the table would be revised to read as set forth below.

b. In paragraph (b), the table would be revised to read as set forth below.

§ 130.30 Hourly rate and minimum user fees.

(a) * * *

	User fee	
	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Hourly rate:		
Per hour	$84.00	$84.00
Per quarter hour	21.00	21.00
Per service minimum fee	24.00	25.00

(b) * * *

Overtime rates (outside the employee's normal tour of duty)	Premium rate user fee	
	Oct. 1, 2002–Sept. 30, 2003	Beginning Oct. 1, 2003
Premium hourly rate Monday through Saturday and holidays:		
Per hour	$96.00	$100.00
Per quarter hour	24.00	25.00
Premium hourly rate for Sundays:		
Per hour	108.00	112.00
Per quarter hour	27.00	28.00

* * * * *

16. In § 130.50, paragraph (b)(3)(i), the table would be revised to read as follows:

§ 130.50 Payment of user fees.

* * * * *

(b) * * *

(3) * * *

(i) * * *

Outside of the employee's normal tour of duty	Overtime rates (per hour)			
	Oct. 1, 2002–Sept. 30, 2003	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities: [3]				
Monday–Saturday and holidays	$46.00	$48.00	$49.00	$51.00
Sundays	61.00	63.00	65.00	67.00
Rate for commercial airline inspection services: [4]				
Monday–Saturday and holidays	37.00	39.00	40.00	41.00
Sundays	49.00	51.00	53.00	55.00

[1] Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)

[3] See § 97.1(a) of this chapter or 7 CFR 354.3 for details.

[4] See § 97.1(a)(3) of this chapter for details.

* * * * *

Done in Washington, DC, this 18th day of March, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–6797 Filed 3–20–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1470

Conservation Security Program

AGENCY: Commodity Credit Corporation and the Natural Resources Conservation Service, USDA.

ACTION: Extension of public comment period.

SUMMARY: The Conservation Security Program (CSP) is authorized by Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002. The Natural Resources Conservation Service (NRCS) published an advance notice of proposed rulemaking for CSP on February 18, 2003, (68 FR 7720), with a comment period expiring March 20, 2003. NRCS is hereby extending the period during which it will accept public comment on the advance notice of proposed rulemaking for CSP to April 3, 2003. This extension is to give the public an additional opportunity to comment on key issues that have been raised regarding the implementation of the program.

DATES: Comments must be received in writing by April 3, 2003.

ADDRESSES: Send comments in writing, by mail, to Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or by e-mail to *FarmBillRules@usda.gov;* Attn: Conservation Security Program. The Advance Notice of Proposed Rulemaking may also be accessed via the Internet through the NRCS homepage, at *http://www.nrcs.usda.gov,* and by selecting Farm Bill 2002. All comments, including names and addresses when provided, are placed in the record and are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Charles Whitmore, Acting Director, Conservation Operations Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; fax: (202) 720–4265; submit e-mail to: *charles.whitmore@usda.gov,* Attention: Conservation Security Program.

Signed in Washington, DC, on March 17, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service and Vice President, Commodity Credit Corporation.

[FR Doc. 03–6825 Filed 3–20–03; 8:45 am]

BILLING CODE 3410–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 071–0379b; FRL–7456–5]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Mendocino County Air Quality Management District, and Monterey Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD), Mendocino County Air Quality Management District (MCAQMD), and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern administrative changes for clarity and consistency. We are proposing to approve local rules and a rule rescission to regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 21, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814. Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243–2801. Mendocino County Air Quality Management District, 306 E. Gobbi St., Ukiah, CA 95482–5511. Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: ICAPCD 115, MCAQMD 400(b), and recission of MBUAPCD 209. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules and rule recission in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 17, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–6709 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[TRI–2002–0003; FRL–7469–7]

RIN 2025–AA10

Community Right-to-Know; Toxic Chemical Release Reporting Using North American Industry Classification System (NAICS); Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 9, 1997, the Office of Management and Budget (OMB)

published a **Federal Register** Notice of final decision to adopt the North American Industry Classification System (NAICS) for the United States. NAICS is a new industry classification system that will replace the Standard Industrial Classification (SIC) system that has traditionally been used by government agencies for collecting statistical data and for other administrative and regulatory purposes. Under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA), facilities that are classified in specified SIC codes are subject to Toxics Release Inventory (TRI) reporting. In this notice, EPA is proposing to include in the regulations the NAICS codes that correspond to the SIC codes that are currently subject to the TRI reporting requirements. EPA is also proposing that faciliteis that are subject to TRI reporting requirements report both SIC and NAICS codes on EPCRA section 313 reporting forms for the first full reporting period after the effective date of the final rule. Thereafter, facilities that are subject to TRI reporting requirements would be required to report their NAICS codes only. Finally, EPA is proposing to amend the regulations to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI requirements. EPA is soliciting comments on these proposals and on a list of NAICS codes that will correspond to the SIC codes that are currently subject to TRI reporting requirements.

DATES: Written comments, identified by the docket control number *OEI–10017,* must be received by EPA on or before May 20, 2003.

ADDRESSES: Comments may be submitted by mail: Send three copies of your comments to: Document Control Office, Office of Environmental Information (OEI), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C and I.D. of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/.* For specific information on this rulemaking contact: Judith Kendall, Toxics Releases Inventory Program Divison (2844), OEI, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Telephone: 202–566–0750; Fax: 202–566–0741; email: *kendall.judith@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

Entities that may be affected by this action are those facilities that have 10 or more full time employees or the equivalent 20,000 hours per year, that manufacturer, process, or otherwise use certain toxic chemicals listed on the Toxics Release Inventory (TRI), and which are required under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act (PPA) to report annually to EPA and States their environmental releases and other waste management quantities of such chemicals. Under Executive Order 13148, revised April 26, 2000 (65 FR 24599), all of federal facilities are to comply with the provisions set forth in Section 313 of EPCRA and section 6607 of the PPA. Federal facilities are to comply with those provisions without regard to SIC or NAICS delineations.

Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 et. seq.), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).
Federal Government	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding likely to be affected by this action. Other types of entities are listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *In person.* EPA has established an official public docket for this action under Docket ID No. TRI–2002–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of this official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Pubic Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http:www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public dockets, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Docket.

Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extend feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provided a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (*i.e., ''TRI–2002–2003*) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. TRI–2003–0003. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comment may be sent by electronic mail (e-mail) to *oei.docket@epa.gov.* Attention Docket ID No. TRI–2002–0003. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption. All comments and data in electronic form must be identified by the docket control number *TRI–2002–0003.* Electronic comments on this document may also be filed online at many Federal Depository Libraries.

2. *By Mail.* Send three copies of your comments to: Document Control Office, Office of Environmental Information (OEI), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *By Hand Delivery or Courier.* Comments may be delivered in person or by courier to: EPA Docket Center (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, attention Docket ID No. TRI–2002–0003.

D. How Should I Handle CBI Information That I Want To Submit to the Agency?

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR part 2, subpart B. If a confidentiality claim does not accompany the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the submitter.

II. What Is EPA's Statutory Authority for Taking This Action?

This proposed rule is being issued under sections 313(g)(1) and 328 of EPCRA, 42 U.S.C. 11023(g)(1) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499). In general, section 313 of EPCRA requires owners and operators of facilities in specified SIC codes that manufacture, process, or otherwise use a listed toxic chemical in amounts above specified threshold levels to report certain facility specific information about such chemicals, including the annual releases and other waste management quantities. Section 313(g)(1) of EPCRA requires EPA to publish a uniform toxic chemical release form for these reporting purposes, and it also prescribes, in general terms, the types of information that must be submitted on the form. Section 313(g)(1)(A) requires owners and operators of facilities that are subject to section 313 requirements to report the principal business activities at the facilities. However, Congress provided no guidance as to how such activities should be described. In the past, EPA has required owners and operators of such facilities to identify their principal business activities by reporting, among other things, their primary, and any other applicable SIC codes for the facility. Congress also granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 authorizes the ''Administrator [to] prescribe such regulations as may be necessary to carry out this chapter.'' 42 U.S.C. 11048.

Consistent with these authorities, EPA is proposing to amend 40 CFR part 372 to include the NAICS codes that correspond to the SIC codes that are currently subject to section 313 of EPCRA and section 6607 of the PPA. EPA is further proposing that owners and operators of facilities that are subject to section 313 identify their principal business activities by both SIC and NAICS codes for the first full reporting year after the effective date of the final rule, and thereafter by NAICS code only. Finally, EPA is proposing to amend 40 CFR 372.38(e) to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI requirements.

III. Overview of Proposed Rule

In this notice, EPA is proposing to include in 40 CFR part 372 the NAICS codes that correspond to the SIC codes that are currently subject to TRI reporting requirements. The purpose of this proposal would be to facilitate the transition from reporting of SIC codes on TRI reporting forms to reporting of NAICS codes. This proposed rule would not affect the universe of facilities that is currently required to report under section 313 of EPCRA and section 6607 of the PPA because EPA is not proposing to add or delete industry groups from the list of industries that are currently subject to section 313 reporting requirements. EPA would simply be assigning NAICS codes to the SIC codes that are currently subject to TRI reporting requirements. Accordingly, consistent with the language of section 313(a)(1)(A), SIC codes would still remain in the proposed regulatory text as the basis for identifying the industries that are subject to TRI requirements.

EPA is also proposing amendments to 40 CFR 372.38(g) and (h), and 40 CFR 372.45 to include the NAICS codes that will be subject to the exemption and notification requirements of those sections. Finally, EPA is proposing to amend 40 CFR 372.38(e) to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishments that are classified in any SIC code or NAICS code that is subject to TRI reporting requirements.

IV. Background

A. What Is TRI and Which Facilities Are Currently Required To Report to TRI?

Section 313 of EPCRA and section 6607 of the PPA require owners and operators of certain facilities called ''covered facilities'' to annually report to EPA and State governments their releases and other waste management quantities of listed toxic chemicals. 42 U.S.C. 11023, 13106. In general, a covered facility is one that: (1) Manufactures, processes, or otherwise uses one or more listed toxic chemicals in excess of specified threshold quantities; (2) has 10 or more full time employees or the equivalent 20,000 hours per year, and; (3) is classified in an applicable Standard Industrial Classification (SIC) code. 42 U.S.C. 11023(b)(1)(A); 40 CFR 372.22. Information collected pursuant to section 313 of EPCRA and section 6607 of PPA is organized into a national data base called the Toxics Release Inventory (TRI) which is readily accessible to the public, researchers, industry, government agencies, and other interested parties.

When Congress enacted EPCRA, it specifically identified the manufacturing sector, which included facilities in SIC major group codes 20 through 39, as being subject to the reporting requirements of section 313. *See* Section 313(a)(1)(A) which states:

> The requirements of this section shall apply to owners and operators of facilities that have 10 or more full time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

In addition, pursuant to section 313(b)(1)(B), EPA added seven industry groups to the list of industries required to report to TRI. See 62 FR 23833, May 1, 1997 (hereinafter referred to as the Industry Expansion Rule). These industries included metal mining, coal mining, electrical utilities that combust coal and/or oil for the purpose of generating power for distribution in commerce, certain facilities regulated under the Resource Conservation and Recovery Act (RCRA) subtitle C, chemical wholesalers, petroleum terminals and bulk stations and solvent recovery services. As a result, those facilities with the following SIC code designations (that meet all other applicable threshold criteria for TRI reporting) must report toxic chemical releases and other waste management quantities of toxic chemicals each year: SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis). *See* 40 CFR 372.22.

B. What Action Is EPA Proposing in This Notice?

On April 9, 1997, the Office of Management and Budget (OMB) published a **Federal Register** Notice of final decision (62 FR 17288) to adopt the North American Industrial Classification System (NAICS) for the United States, a new economic classification system that replaces the

SIC system which has traditionally been used by the federal government for collecting and organizing industry-related statistics. OMB's Economic Classification Policy Committee (ECPC) developed NAICS in cooperating with the Instituto Nacional de Estadística, Geografía e Informática (INEGI) of Mexico and Statistics Canada, in order to standardize the industrial statistics produced by the three countries. It was felt that the SIC system was inadequate for this purpose, in part because it classified industries on the basis of several different economic concepts. NAICS, on the other hand, classifies establishments according to similarities in the processes used to produce goods and services. NAICS is the first industry classification system developed in accordance with a single principle of aggregation, the principle that producing units that use similar production processes should be grouped together in the classification.

Notwithstanding its primary function as a tool to aid in the collection and organization of industrial statistical information, OMB recognized that NAICS, like its predecessor, SIC, may also be effectively used for nonstatistical purposes including administrative, tax and regulatory programs. However, in its notice of final decision adopting NAICS for the United States, OMB instructed the heads of government agencies to determine that NAICS industry definitions are appropriate for the implementation of such programs before agencies use NAICS codes in them. *See* 62 FR 17288, 17294. For the reasons discussed in Unit IV.D. below, EPA's Administrator has determined that NAICS industry definitions will be appropriate for implementing section 313 of EPCRA and section 6607 of the PPA. EPA is therefore proposing to amend 40 CFR part 372 to include the NAICS codes that correspond to the SIC codes that are currently subject to the reporting requirements of section 313 of EPCRA and section 6607 of the PPA. In addition, EPA is proposing to amend 40 CFR 372.85(b)(5) and 372.95(b)(10) such that covered facilities would report their appropriate NAICS codes on the TRI reporting form, Form, R, and in Alternate Threshold Certification Statements, Form A, where applicable. Covered facilities would be required to report both their appropriate SIC and NAICS codes on Form R and on the Alternate Threshold Certification Statements for the first full reporting year after the effective date of the final rule, and thereafter their NAICS codes only. EPA is also proposing amendments to 40 CFR 372.38(g) and (h), and 40 CFR 372.45 to include the NAICS codes that will be subject to the exemption and notification requirements of those sections.

Finally, EPA is proposing to amend 40 CFR 372.38(e) to extend the exemption provided therein to owners of covered facilities who lease, with no other business interest, such facilities to operators of establishment that are classified in any SIC code or NAICS code that is subject to TRI reporting requirements. EPA solicits your comments on these proposals and welcomes your suggestions for facilitating the transition of TRI reporting from SIC codes to NAICS codes.

C. Will This Proposed Rule Affect the Universe of Facilities That Are Currently Required To Report to TRI?

This proposed rule would not affect the universe of facilities that is currently required to report under section 313 of EPCRA and section 6607 of the PPA because EPA is not proposing to add or delete industry groups from the list of industries that are currently subject to section 313 reporting requirements. EPA is simply assigning NAICS codes to those SIC codes that are already subject to section 313 reporting requirements, and requiring covered facilities in those industries to report the NAICS code that corresponds to the covered SIC code.

For purposes of TRI reporting, section 313 defines covered facilities in terms of SIC codes. Facilities in the affected SIC codes are required to report, regardless of how those facilities are designated in other nomenclature systems. Because inclusion in a specific SIC code is what triggers the reporting obligation, to use NAICS codes, EPA must be able to ''cross-walk'' reliably between SIC codes and NAICS codes. However, SIC codes and NAICS codes do not always correspond directly; certain industries that are classified in the ''manufacturing'' sector in SIC (*i.e.,* SIC codes 20 through 39), and therefore are subject to section 313 of EPCRA and section 6607 of the PPA, are not classified in the ''manufacturing'' sector in NAICS (*i.e.,* NAICS codes 31 through 33). For example, Lumber and Wood Products (SIC 24) corresponds to Logging (NAICS 11331), which is a non-manufacturing industry in NAICS. EPA has identified 18 SIC manufacturing industries that are currently subject to section 313 of EPCRA and section 6607 of the PPA that are not classified as NAICS manufacturing industries. Owners and operators of such facilities would continue to report under the appropriate NAICS designations (provided they meet all other applicable TRI reporting criteria), despite the fact that the facilities are not classified in a manufacturing industry in NAICS. Conversely, EPA has identified 26 SIC industries that are not currently subject to section 313 of EPCRA and section 6607 of the PPA, but which are classified as NAICS manufacturing industries. For example, retail bakeries are classified in the retail sector in SIC (SIC 5461), but are classified in the manufacturing sector in NAICS (NAICS 311811). As explained above, because this current action is not intended to add to or delete from the list of industry groups that is currently subject to TRI, the individual facilities not included in the SIC manufacturing codes will not be required to report simply because NAICS places the industry in the manufacturing sector.

D. Why Is EPA Proposing To Use NAICS in Addition to SIC for Section 313 and Section 6607 Reporting Purposes?

EPA believes it is appropriate to amend 40 CFR part 372 to include the NAICS codes that correspond to the SIC codes that are currently subject to TRI reporting requirements for several reasons. First, the SIC manual has not been updated since 1987 despite significant changes in the national economy, and limitations in the structure of the SIC system have led to difficulties in classifying new and emerging industries. (North American Industry Classification System manual, 1997, p.21). As a result, the existing SIC systems does not reflect many of the important changes that have occurred within the national economy over the last decade or so. More importantly, it will not be updated in the future because of OMB's adoption of NAICS as the United States' new industry classification system. Accordingly, facilities that come into existence in the future will not have experience using SIC codes and may have difficulty determining whether or not they are subject to TRI requirements. Moreover, as OMB has recognized, the SIC system is somewhat cumbersome and inflexible to use because it classifies industries on the basis of several economic principles rather than a single, consistent principle (North American Industry Classification System manual, 1997, p.21). NAICS, on the other hand, represents a more targeted approach to industry classification, focusing primarily on production processes. Finally, the conversion to NAICS is part of EPA's data standards program, which helps promote efficient data exchange and integration through consistently defined and formatted data. Using NAICS for TRI reporting purposes will enable more

efficient database integration and will promote public access to commonly defined data from disparate sources.

V. How Did EPA Develop This Proposal and What Are the Issues on Which EPA Is Interested in Receiving Comment?

A. The Manufacturing Sector: SIC Codes 20 Through 39

This proposal to include the NAICS codes in 40 CFR part 372 that correspond to the SIC codes that are currently subject to the TRI requirements is being undertaken with the goal of maintaining coverage of all facilities that are currently required to report releases and waste management quantities of listed toxic chemicals. As noted above in Unit IV.C., if the TRI Program were to adopt a straight 1:1 identification of NAICS facilities to be covered (*e.g.,* SIC Manufacturing facilities (20–39) → NAICS Manufacturing facilities (31–33)), many currently covered facilities would no longer be covered and other facilities that are not covered now would be added to the list of covered facilities. This would not be consistent with the statutory requirements. Therefore, to avoid this problem, the TRI Program developed an extensive SIC →NAICS →SIC crosswalk document based on U.S. Census Bureau SIC→NAICS and NAICS→SIC conversion tables in order to identify the universe of NAICS codes that correspond to covered SIC does. [Table 1—1997 NAICS United States Matched to 1987 U.S. SIC and Table 2—1987 U.S. SIC Matched in 1997 NAICS United States at *http://www.census.gov/epcd/www/naicstab.htm*] From the crosswalk document, EPA is developing a web-based crosswalk tool for users that links all 4-digit SIC codes that are subject to TRI requirements to 6-digit NAICS codes that would also be subject to such requirements.

EPA developed its crosswalk document and is developing the crosswalk tool by carefully mapping each SIC code to its corresponding NAICS code or codes, and the mapping each of the resulting NAICS codes back to SIC. More specifically, for each 3-digit industry subsector in the NAICS manufacturing sector (*i.e.,* NAICS 311 through 339), EPA checked the Census Bureau's NAICS to SIC crosswalk table at *http://www.census.gov/* to find industries that are not in the SIC manufacturing sector (SIC codes 20 through 39), but which have been classified as manufacturing industries under NAICS. Similarly, EPA checked the Census Bureau's SIC to NAICS crosswalk table to find SIC manufacturing industries that are not classified in the NAICS manufacturing sector. By conducting this mapping, EPA was able to develop a list of NAICS codes that corresponds to the list of manufacturing sector SIC codes that are subject to TRI requirements. A hard copy of the Census Bureau's SIC/NAICS crosswalk document is included in the docket for this proposed rule.

It is possible that new NAICS codes will be created in the future. In the event that the Census Bureau does not update its crosswalk to provide corresponding SIC codes when newly-created NAICS codes are published, EPA would formally request such a determination from the Census Bureau. Should the Census Bureau decline the request, EPA would rely on information such as the definition of the newly-created NAICS codes and how closely that definition tracks the definitions of covered SIC codes, the types of activities that are undertaken by facilities that are classified in the new NAICS code, whether the facilities that are classified in the new NAICS code were previously classified in a covered SIC or NAICS code, and other relevant information.

In general, NAICS manufacturing industries that would be subject to TRI reporting requirements would be identified by their 3-digit subsector codes (*e.g.,* NAICS 311, 324, 339). In some cases, all of the six digit NAICS industries that are included within the 3-digit NAICS industry subsector would be subject to TRI requirements (*i.e.,* all 6 digit NAICS industries within that subsector correspond to industries with SIC codes that are currently subject to TRI requirements). The following NAICS manufacturing subsectors contain NAICS industries, all of which would be subject to TRI requirements: NAICS 316, Leather and Allied Product Manufacturing; NAICS 321, Wood Product Manufacturing; NAICS 322, Paper Manufacturing; NAICS 324, Petroleum and Coal Products Manufacturing; NAICS 327, Nonmentaallic Mineral Product Manufacturing; NAICS 331, Primary Metal Manufacturing; NAICS 332 Fabricated Metal Product Manufacturing; NAICS 333, Machinery Manufacturing; and NAICS 336, Transportation Equipment Manufacturing.

In other cases, some, but not all, of the 6 digit NAICS industries contained within a 3-digit NAICS subsector would be subject to TRI requirements. Exceptions from the reporting requirements are provided for industries that were previously classified outside of the SIC manufacturing sector (SIC codes 20 through 39) but are not classified within the NAICS manufacturing sector (NAICS codes 31 through 33). NAICS industry exceptions are identified by their 6-digit NAICS code and NAICS industry description, and also by their corresponding SIC code and SIC industry description. For purposes of this preamble and the proposed rule, EPA has defined ''previously classified'' to mean a facility that was properly classified, according to 40 CFR 372.22(b), under a given Standard Industrial Classification code, as identified in the Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget. See section 372.3 of the proposed regulatory text; see generally, Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual, 1987.* Accordingly, owners or operators of facilities that are properly classified in the excepted industries because they were properly classified in a SIC industry that is not currently subject to TRI requirements would not report to TRI under this proposal. Conversely, owners or operators of manufacturing facilities that are, or have been, improperly classifying their facilities in SIC codes that are not currently subject to TRI would report to TRI under this proposal.

Industry exceptions are limited to specific types of industries when it is necessary to do so to ensure that the covered facilities under NAICS are identical to those under SIC. For example, under NAICS 311 (Food Manufacturing), NAICS 311612 (defined as ''Meat Processed from Carcasses''), is listed as an industry exception. However, NAICS 311612 includes industries that were classified in SIC 2013, ''Sausages and Other Prepared Meat Products,'' and in SIC 5147, ''Meats and Meat Products.'' Facilities that were previously classified in the former industry are currently subject to TRI requirements whereas those that were previously classified in the latter industry are not. Accordingly, the exception for NAICS 311612 applies only to those facilities that were previously classified in SIC 5147. All other facilities included in NAICS 311612 would report if they satisfy the applicable reporting criteria

Similarly, under NAICS 325 (Chemical Manufacturing), there is an exception for certain facilities classified in NAICS 325998 (Miscellaneous Chemical Product and Preparation Manufacturing). This exception is limited to facilities primarily engaged in filling pressure containers (*i.e.,* aerosol containers) on a job order or contract

basis that were previously classified under SIC 7389 (Business Services, Not Elsewhere Classified). However, those facilities that fill pressure containers on a job order or contract basis that were previously classified in the manufacturing sector under the SIC system because they are primarily engaged in activities, such as blending of chemicals, that are considered under the SIC to be manufacturing activities, would continue to report to TRI.

One of the industry exceptions in NAICS 311, under 311119, Food Manufacturing, includes facilities that are primarily engaged in Custom Grain Grinding for Animal Feed. Facilities that conduct custom milling of animal feed and those that provide mobile feed milling services that were previously classified under SIC 2048, Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats, are not included in this exception.

At the end of the list of 3-digit NAICS manufacturing subsector codes and exceptions that appears in this preamble in Unit V.D.1., there is a list of additional 6-digit NAICS industries. Some of these industries are the NAICS equivalents of the SIC industries that were added to TRI in the Industry Expansion Rule. See Unit V.B. below. Others were considered manufacturing industries under SIC, but are not considered manufacturing industries under NAICS. For example, whereas SIC treats establishments that produce maple syrup from maple sap as manufacturing establishments classified in SIC 2099 (Food Preparations, NEC, Reducing Maple Sap to Maple Syrup), NAICS treats establishments engaged in maple syrup production as an agricultural activity and classifies such establishments in NAICS 111998 (All Other Miscellaneous Crop Farming). Despite the NAICS classification, establishments that reduce maple sap to maple syrup are still subject to TRI requirements. See Unit IV.C. above. Another notable example of a SIC manufacturing industry which is no longer classified as such in NAICS is SIC 3295 (Minerals and Earths, Ground or Otherwise Treated). This SIC industry is composed of establishments operating without a mine or quarry and that are primarily engaged in crushing, grinding, pulverizing, or otherwise preparing clay, ceramic, and refractory minerals; barite; and miscellaneous nonmetallic minerals, except fuels (Standard Industrial Classification Manual, 1987, p. 170). Such establishments are now classified within various industries in the mining sector in NAICS (NAICS code 21), but they are still subject to TRI reporting requirements.

B. Industries Added to TRI in the Industry Expansion Rule

For the mining industry and for most of the other industries that were added to the list of industries that are required to report under the Industry Expansion Rule (62 FR 23833), the crosswalk from SIC to NAICS based on the Census Bureau's crosswalk tables was more straightforward. The metal mining industry, SIC major group 10 (except 1011, 1081, and 1094), converted to NAICS 212221 (Gold Ore Mining), 212222 (Silver Ore Mining), 212231 (Lead Ore and Zinc Mining), 212234 (Copper Ore and Mickel Ore Mining), and 212299 (All Other Metal Ore Mining). The coal mining industry, SIC major group 12 (except 1241), consists of three 4-digit SIC codes that convert to three 6-digit NAICS codes: 212111 (Bituminous Coal and Lignite Surface Mining), 212112 (Bituminous Coal Underground Mining), and 212113 (Anthracite Mining).

For electric utilities subject to TRI requirements, three 4-digit SIC codes-4911, 4931, and 4939-convert to six 6-digit NAICS codes, all within NAICS 221, the Utilities subsector of the Utilities sector: 221111 (Hydroelectric Power Generation), 221112 (Fossil Fuel Electric Power Generation, 221113 (Nuclear Electric Power Generation), 221119 (All Other Electric Power Generation), 221121 (Electric Power Bulk Transmission and Control), and 221122 (Electric Power Distribution).

SIC 4953, Refuse Systems, for which TRI reporting is limited to facilities regulated under RCRA Subtitle C, converts to five 6-digit NAICS codes, all within NAICS 562, the Waste Management and Remediation Services subsector of the Administrator and Support and Waste Management and Remediation Services sector: 562920 (Materials Recovery Facilities), 562211 (Hazardous Waste Treatment and Disposal), 562212 (Solid Waste Landfill), 562213 (Solid Waste Combustors and Incinerators), and 562219 (Other Nonhazardous Waste Treatment and Disposal).

SIC 5169, Chemicals and Allied Products-Wholesale, converts to only one 6-digit NAICS code: 422690 (Other Chemical and Allied Products Wholesalers). In the Census Bureau SIC and NAICS crosswall tables, SIC 5171, Petroleum Bulk Stations and Terminals, is represented by one NAICS wholesale code (4117, Petroleum Bull Stations and Terminals) and two NAICS retail codes (454311, Heating Oil Dealers and 454312, Liquefied Petroleum Gas (Bottled Gas Dealers), even though SIC 5171 includes only establishments primarily engaged in the wholesale distribution of crude petroleum and petroleum products from bulk liquid storage facilities. Only facilities that are primarily engaged in the wholesale distribution of crude petroleum and petroleum products from bulk liquid storage facilities. Only facilities that are primarily engaged in the wholesale distribution of crude petroleum and petroleum products from bulk liquid storage facilities are required to report waste management quantities and toxic chemical releases to the TRI. Accordingly, facilities in NAICS 42271 (Petroleum Bulk Stations and Terminals) are subjects to TRI requirements and those in 454311 and 454312 are not. Retail facilities were never covered under EPCRA 313, nor do they meet the definition of SIC 5171 which includes establishments that are primarily engaged in the wholesale distribution of crude petroleum and petroleum products.

Finally, the crosswalk documents developed by the Census Bureau do not identify a NAICS code or codes that correspond to SIC 7389, Solvent Recovery Services (on a contract or fee basis). However, with guidance from representatives of the Census Bureau, EPA has concluded that NAICS 562112, Collection of Hazardous Waste, is one of two correct conversions for SIC 7389, Solvent Recovery Services (on a contract or fee basis). [U.S. Census Bureau letter from Mark E. Wallace to Maria J. Doa, U.S. EPA]. Establishments with a primary SIC code of 4212, Local Trucking Without Storage (hazardous waste collection without disposal), are also included in NAICS 562112. However, because facilities having a primary SIC code of 4212 are not currently subject to TRI requirements, they would not report. Solvent recovery services (on a contract or fee basis) that purify, recycle or otherwise treat solvents collected are also classified in manufacturing according to the material(s) purified, recycled, or otherwise treated. [U.S. Census Bureau letter from Mark E. Wallace to Maria J. Doa, U.S. EPA]. For toxic solvents, these facilities will fall under NAICS subsector 325, Chemical Manufacturing.

C. Auxiliary Facilities

Auxiliary facilities that are classified in covered SIC codes are subject to EPCRA section 313 reporting requirements. Today's proposal does not affect the status of auxiliary facilities for purposes of reporting under section 313 of EPCRA and section 6607 of the PPA. However, during the transition year,

when covered facilities would report both SIC and NAICS codes, off-site auxiliary establishments would report both the SIC and NAICS codes of the establishment or facility for which they perform support services. Thereafter, such facilities would report only the NAICS code of the establishment or facility for which it performs support services. Similarly, during the transition year, on-site auxiliary establishments that report independently from the other establishments in the facility would report both the SIC and NAICS codes of the covered establishment or facility for which it performs support services. Thereafter, such facilities would report only the NAICS code of the establishment or facility for which it performs support services.

D. Which NAICS Codes Will Be Subject to Tri Requirements Under This Proposed Rule?

EPA has preliminarily determined that facilities with the following NAICS codes (and auxiliary facilities that provide support services for them) would report their toxic chemical releases and other waste management activities to TRI. Once final, this list will be used for regulatory and enforcement purposes. As noted above, it is EPA's intent to include only NAICS codes and industry descriptions on this list that correspond to SIC codes and industry descriptions that are currently covered by EPCRA section 313.

1. NAICS Codes That Correspond to SIC Codes 20 Through 39

NAICS 311—Food Manufacturing
Exceptions:
311119—Exception is limited to Custom Grain Grinding for Animal Feed (previously classified under SIC 0723 Crop Preparation Services for Market, Except Cotton Ginning);
311330—Exception is limited to Candy Stores, Chocolate, Candy Made on Premises not for Immediate Consumption (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores);
311340—Exception is limited to Candy Stores, Nonchocolate, Candy Made on Premises not for Immediate Consumption (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores);
311811—Retail Bakeries (previously classified under SIC 5461, Retail Bakeries);
311611—Exception is limited to Custom Slaughtering (previously classified under SIC 0751, Livestock Services, Except Veterinary);
311612—Exception is limited to Boxed Beef and Boxed Meat Produced from Purchased Carcasses (previously classified under SIC 5147, Meats and Meat Products);

NAICS 312—Beverage and Tobacco Product Manufacturing
Exceptions: 312229—Exception is limited to Tobacco Sheeting Services (previously classified under SIC 7389, Business Services, NEC);

NAICS 313–Textile Mills
Exceptions:
313311—Exception is limited to Converters, broadwoven piece goods and converting textiles, broadwoven (previously classified under SIC 5131, Piece Goods and Notions, broadwoven and non-broadwoven piece good converters), and facilities formerly classified under SIC 7389, Business Services, NEC (Sponging fabric for tailors and dressmakers);
313312—Exception is limited to narrow woven Converting Textiles, and narrow woven piece goods Converters, (previously classified under SIC 5131, Piece Goods and Notions, converters, except broadwoven fabric);

NAICS 314—Textile Product Mills
Exceptions:
314121—Exception is limited to Custom drapery manufacturers for retail sale (previously classified under SIC 5714, Drapery, curtain, and Upholstery Stores)
314129—Exception is limited to Custom slipcover manufacturers for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores)
314999—Exception is limited to Binding carpets and rugs for the trade, Carpet cutting and binding, and Embroidering on textile products (except apparel) for the trade (previously classified under SIC 7389, Embroidering of advertising on shirts and Rug binding for the trade);

NAICS 315—Apparel Manufacturing
Exceptions:
315222—Exception is limited to Custom tailors, men's and boys' suits, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous apparel and accessory stores (custom tailors);
315223—Exception is limited to Custom tailors, men's and boys' dress shirts, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous apparel and accessory stores (custom tailors);
315233—Exception is limited to Bridal dresses or gowns, custom made, Custom tailors, women's, misses' and girls' dresses cut and sewn from purchased fabric (except apparel contractors)(previously classified under SIC 5699, Miscellaneous apparel and accessory stores (custom dressmakers);

NAICS 316—Leather and Allied Product Manufacturing

NAICS 321—Wood Product Manufacturing

NAICS 322—Paper Manufacturing

NAICS 323—Printing and Related Support Activities
Exceptions: 323114—Exception is limited to Instant printing (*i.e.,* quick printing)(previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing));

NAICS 324—Petroleum and Coal Products Manufacturing

NAICS 325—Chemical Manufacturing
Exceptions: 325998—Exception is Limited to Aerosol can filling on a job order or contract basis (previously classified under SIC 7389, Business Services, NEC (aerosol packaging))

NAICS 326—Plastics and Rubber Products Manufacturing
Exceptions: 326212—Exception is limited to Tire Retreading, Recapping or Rebuilding (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding))

NAICS 327—Nonmetallic Mineral Product Manufacturing

NAICS 331—Primary Metal Manufacturing

NAICS 332—Fabricated Metal Product Manufacturing

NAICS 333—Machinery Manufacturing

NAICS 334—Computer and Electronic Manufacturing
Exceptions:
334611—Exception is limited to Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software))
334612—Exception is limited to mass reproducing pre-recorded Video cassettes, and mass reproducing Video tape or disk (previously classified under SIC 7819, Services Allied to Motion Picture Production (reproduction of video))

NAICS 335—Electrical Equipment, Appliance, and Component Manufacturing
Exceptions: 335312—Exception is limited to Armature rewinding on a factory basis (previously classified under SIC 7694 (Armature Rewinding Shops (remanufacturing))

NAICS 336—Transportation Equipment Manufacturing

NAICS 337—Furniture and Related Product Manufacturing
Exceptions: 337110—Exception is limited to Wood Kitchen Cabinet and Counter top Manufacturing (previously classified under SIC 5712, Furniture Stores (custom wood cabinets))
337121—Exception is limited to Upholstered furniture, household type, custom manufacturing (previously classified under SIC 5712, Furniture Stores (upholstered, custom made furniture)
337122—Exception is limited to Nonupholstered, household type, custom wood furniture manufacturing (previously classified under SIC 5712, Furniture Stores (custom made wood nonupholstered household furniture except cabinets))

NAICS 339—Miscellaneous Manufacturing
Exceptions:
339115—Exception is limited to Ophthalmic Goods Manufacturing, lens grinding (previously classified under SIC 5995, Optical Goods Stores (optical laboratories grinding of lenses to prescription))

339116—Dental laboratories (previously classified under SIC 8072, Dental Laboratories)

NAICS 111998—All Other Miscellaneous Crop Farming (limited to facilities that reduce maple sap to maple syrup (previously classified under SIC 2099: Food Preparations, NEC, Reducing Maple Sap to Maple Syrup));

NAICS 511110—Newspaper Publishers;

NAICS 511120—Periodical Publishers;

NAICS 511130—Book Publishers;

NAICS 511140—Database and Directory Publishers

Exceptions: 511140—Exception is limited to Address list compliers, Address list publishers, Address list publishers and printing combined, Address list publishing (*i.e.,* establishments known as publishers), Business directory publishers, Catalog of collections publishers, Catalog of collections publishers and printing combined, Compiling mailing lists, Directory compilers, Mailing list compiling services (previously classified under SIC 7331, Direct Mail Advertising Services (mailing list compliers))

NAICS 511191—Greeting Card Publishers;

NAICS 511199—All Other Publishers

NAICS 512220—Integrated Record Production/Distribution

NAICS 512230—Music Publishers

Exceptions: 512230—Exception is limited to Music copyright authorizing use, Music copyright buying and licensing, Music publishers (previously classified under SIC 8999, Services, NEC (music publishing))

NAICS 211112—Natural Gas Liquid Extraction (limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic Chemical, NEC (recovering sulfur from natural gas))

NAICS 212324—Kaolin and Ball Clay Mining (limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating koalin and clay (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1355))

NAICS 212325—Clay and Ceramic and Refractory Minerals Mining (Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating clay and ceramic and refractory minerals(previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1459)))

NAICS 212393—Other Chemical and Fertilizer Mineral Mining (limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc, of minerals in SIC 1479))

NAICS 212399—All Other Nonmetallic Mineral Mining (limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc, of minerals in SIC 1499))

NAICS 488390—Other Support Activities for Water Transportation (limited to Drydocks, floating (*i.e., routine repair and maintenance of ships and boats) (previously classified under SIC 3731 Shipbuilding and Repairing (floating drydocks not associated with a shipyard))*

NAICS 811490—Other Personal and Household Goods Repair and Maintenance (limited to Boat, pleasure, repair and maintenance services without retailing new boats) (previously classified under SIC 3732 Boat Building and Repairing (pleasure boat building))

NAICS 541710—Research and Development in the Physical, Engineering, and Life Sciences (limited to Guided missile and space vehicle engine research and development) (previously classified under SIC 3764), and Guided missile and space vehicle parts (except engines) research and development (previously classified under SIC 3769)

2. NAICS Codes That Correspond to SIC Code 10 (Except 1011, 1084, and 1094)

NAICS 21211—Bituminous Coal and Lignite Surface Mining

NAICS 21212—Bituminous Coal Underground Mining

NAICS 21213—Anthracite Mining

3. NAICS Codes That Correspond to SIC Code 12 (Except 1241)

NAICS 212221—Gold Ore Mining

NAICS 212222—Silver Ore Mining

NAICS 212231—Lead Ore and Zinc Mining

NAICS 212234—Copper Ore and Nickel Ore Mining

NAICS 212299—All Other Ore Mining

4. NAICS Codes That Correspond to SIC Codes 4911, 4931, and 4939 (Limited to Facilities That Combust Coal and/or Oil for the Purpose of Generating Power for Distribution in Commerce)

NAICS 221111—Hydroelectric Power Generation

NAICS 221112—Fossil Fuel Electric Power Generation

NAICS 221113—Nuclear Electric Power Generation

NAICS 221119—All Other Electric Power Generation

NAICS 221121—Electric Bulk Power Transmission and Control

NAICS 221122—Electric Power Distribution

5. NAICS Code That Correspond to SIC Code 4953 (Limited to Facilities Regulated Under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. 6921 *et seq.*

NAICS 562920—Materials Recovery Facilities (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*)

NAICS 562211—Hazardous Waste Treatment and Disposal (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. *et seq.*)

NAICS 562212—Solid Waste Landfill (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. *et seq.*)

NAICS 562213—Solid Waste Combustors, and Incinerators (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. *et seq.*)

NAICS 562219—Other Nonhazardous Waste Treatment and disposal. (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. *et seq.*)

6. NAICS Code That Corresponds to SIC Code 5169

NAICS 422690—Other Chemical and Allied Products Wholesalers

7. NAICS Code That Corresponds to SIC 5171

NAICS 422710—Petroleum Bulk Stations and Terminals (wholesale)

8. NAICS Code That Corresponds to SIC Code 7389 (Limited to Facilities Primarily Engaged in Solvet Recovery Services on a Contract or fee Basis)

NAICS 562112—Collection of Hazardous Waste Limited to facilities primarily engaged in solvent recovery services on a contract or fees basis

NAICS 325—Chemical Manufacturing

E. How Will Section 313 Reporting Requirements Change as a Result of This Proposal?

TRI reporting requirements would remain substantially the same under this proposal as they are now. The difference is that, except for the first full reporting year after the effective date of the final rule, covered facilities would be reporting their primary and secondary NAICS codes on Form R and on Alternate Threshold Certification Statements rather than their primary and secondary SIC codes. Because the statute identifies covered facilites by SIC code, the industries subject to TRI requirements would continue to be identified in the regulatory text by SIC code, although the text would be amended to include NAICS codes as

well. *See* 40 CFR 372.22(b) and 372.23 of the proposed regulatory text below. This is primarily to help owners or operators of covered facilities identify the appropriate NAICS code to be used on reporting forms. By continuing to use SIC codes in the regulatory text, EPA can ensure that currently covered facilities will continue to be covered even if EPA made a mistake in the translation from SIC codes to NAICS codes. Finally, the owner or operator of a covered facility might come to a different conclusion than EPA did with respect to the NAICS code that corresponds to the facility's SIC code. If the regulatory text only included NAICS codes, the owner or operator of such a facility might assume that she is no longer subject to TRI requirements. The proposed regulatory text would ensure that the owner or operator would understand that she must continue to report regardless of whether or not she agrees with EPA's determination on the NAICS code that most appropriately corresponds to her facility's SIC code. In sum, facilities that are currently reporting to TRI because they are classified in SIC codes that are currently subject to TRI reporting requirements would continue to report under this proposed rule if they satisfy the applicable reporting criteria.

EPA is proposing that owners or operators of covered facilities report bot SIC codes and NAICS codes during the first full reporting period after the effective date of the final rule. Reporting both SIC and NAICS codes for the first full reporting period is necessary to facilitate continued time-series analysis of the TRI data. Each year, TRI data are compiled, analyzed and presented to the public in a report called the Toxics Release Inventory Public Data Release. A substantial part of the report is devoted to an analysis of the data by industry group for the current year and over time. Industry-specific and chemical-specific on- and off-site releases and other waste management data are analyzed for the most recent reporting year, from 1988 to the present for TRI's original release and transfer categories (since 1991 for the other waste management data), and from 1998 to the present for new industries reporting to TRI since 1998. Time-series analyses of TRI data are critical for reviewing trends in overall releases and management of waste and for measuring industry progress in these areas. For example, the 2000 TRI Public Data Release (presenting 1998 data) includes a table that presents percent change in total TRI on-site and off-site releases for each of the 19 manufacturing industries, designated by their 2-digit SIC major group code. In all but one of the manufacturing categories, total on- and off-site releases decreased from 1988 to 1998, in several industries by well over 50%. In order to continue to present these types of important analyses to the public, careful tracking of code changes during the SIC to NAICS transition is critical.

Moreover, a dual reporting requirement for the transition reporting period will be useful in fine tuning the list of NAICS industries that corresponds to the list of SIC industries that are currently subject to TRI requirements. The dual reporting for the transition reporting period will serve as an extra quality assurance measure to ensure that with the transition to reporting by NAICS code, no additional industry groups are inadvertently added, and that all currently reporting industries are included. EPA has concluded that the additional burden associated with requiring covered facilities to report both SIC and NAICS codes for one year is negligible. See the discussion below in Unit VI.

F. Why Is EPA Proposing To Extend the Exemption in 40 CFR 372.38(e)?

The TRI regulations 40 CFR 372.38(e) exempt from TRI reporting requirements, ''owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments within SIC code 20 through 39 where the owner has no other business interest in the operation of the covered facility.'' The exemption acknowledges the difficulties in requiring such an owner to report when he is not in a position which would allow him to determine compliance or report the required information. 53 FR 4499, 4502. EPA believes it is appropriate to extend this exemption to owners of facilities that lease such facilities to operators of establishments within the SIC codes added to TRI in the Industry Expansion Rule, when such owners have no other business interest in the operation of such establishments. The rationale for the exemption applies equally to those owners as it does to owners of facilities who lease them to operators of establishments in SIC codes 20 through 39. Because the proposed amendment to 40 CFR 372.38(e) extends the exemption to other industries, there is no cost to industry associated with it.

G. What Are the Issues on Which EPA Is Interested in Receiving Comments?

EPA is particularly interested in receiving comments on the following issues:

(i) The proposed list of NAICS industries that correspond to the SIC industries that are subject to TRI requirements.

(ii) Whether the dual reporting requirement (reporting of both SIC and NAICS codes) should be included for the first reporting period after the effective date of the final rule, and whether the requirement should be extended into subsequent reporting years.

(iii) The estimated burden of the new reporting requirements.

(iv) Alternatives for the regulatory text that would accomplish the objectives specified in this proposal.

VI. What Additional Reporting Burden Is Associated With This Action?

EPA has evaluated the potential burden and cost of using NAICS for TRI reporting as described in this proposal. EPA expects that the burden associated with this change for affected facilities would be negligible. OMB adopted NAICS as the United States' industry classification system in 1997, and facilities are or should be already familiar with their NAICS codes from other administrative and regulatory reporting requirements of EPA and other governmental entities. EPA does not expect or intend that this proposed rule would affect the universe of facilities that are currently required to report to TRI. EPA would simply be assigning NAICS industry codes to those SIC industries which are already subject to section 313 reporting requirements, and requiring covered facilities in those industries to report under the NAICS code tha corresponds to the covered SIC code. Only those facilities that meet the SIC code requirements in 40 CFR 372.22(b) would continue to report releases and other waste management quantities of toxic chemicals to the TRI.

VII. What Are the References Cited in This Proposed Rule?

1. Executive Office of the President, Office of Management and Budget, *North American Industry Classification System,* United States, 1997 (NTIS PB98–127293).

2. Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual, 1987* (NTIS PB87–100012).

1. 1997 NAICS United States Structure, Including Relationship to 1987 U.S. SIC, *Table 1—1997 NAICS United States Matched to 1987 U.S. SIC, Table 2—1987 U.S. SIC Matched to 1997 NAICS United States.* (*http://www.census.gov/epcd/www/naicstab.htm*).

2. U.S. Census Bureau letter from Mark E. Wallace to Maria J. Doa, U.S. EPA.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's collections of information, after initial display in the **Federal Register** and in addition to its display on any related collection instrument, are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the Information Collection Requests (ICRs) OMB control numbers 2070–0093 (EPA ICR No. 1363.11) for Form R and 2070–0143 (EPA ICR No. 1704.05) for Form A.

Copies of the ICR documents may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr.* Include the EPA ICR and OMB numbers in any correspondence.

This proposed rule would not impose any new information collection burden on affected facilities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Facilities that would be affected by the proposed rule already report their industrial classification codes on the approved reporting forms using SIC codes. Moreover, as noted above, OMB adopted NAICS over five years ago, so affected facilities are or should already be familiar with their NAICS codes from administrative and regulatory reporting requirements of EPA and other governmental entities that have already converted to NAICS reporting.

Although EPA does not believe that the reporting requirements associated with this proposed rule would impose any new information collection burden, Form R and Form A will have to be amended to account for the reporting of both SIC and NAICS codes for the first full reporting year after the effective date of the final rule. They will also have to be amended to account for the reporting of NAICS codes after that first full reporting year. EPA will work with OMB to make the necessary changes to the TRI reporting forms.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a ''small business'' by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After consideration of the potential economic impacts of this proposed rule on small entities, it has been determined that this action will not have a significant economic impact on an substantial number of small entities.

The change proposed by this rulemaking is to require affected facilities to report their NAICS rather than their SIC code, except for the first year of implementation when both the SIC and the NAICS codes will be reported. In the first year, the additional burden of reporting both SIC and NAICS codes is negligible considering that the SIC code is readily available from previous reporting forms submitted by the facility and that facilities are already using the NAICS code in other government data collection exercises. In subsequent years, the net burden on small entities should be zero as the NAICS code replaces the SIC code on the reporting forms. We welcome comments on issues related to potential impacts of the proposed rule on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As discussed in Section VI above, EPA believes that affected facilities already are or should be familiar with their NAICS codes from other activities, including reporting to other governmental authorities. Provision of the NAICS code in addition to, or in lieu of, the SIC code is expected to impose negligible incremental burden on affected facilities. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely adopts, for TRI reporting purposes, the NAICS industry classification system that has replaced the SIC system previously used for collecting statistical data and for other administrative and regulatory purposes. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This action merely adopts, for TRI reporting purposes, the NAICS industry classification system that has replaced the SIC system previously used for collecting statistical data and for other administrative and regulatory purposes. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian Tribal Governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note), directs EPA to used voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA recognizes that NAICS, like SIC, is a standard that was developed by OMB primarily as a means to collect and organize industrial statistics for the federal government. However, EPA has not identified an alternative voluntary consensus standard for defining industry classifications. Even if one exists, EPA believes it would be impractical to use such a standard for reporting purposes under section 313 of EPCRA and section 6607 of the PPA. One of the reasons for switching from SIC to NAICS is to maintain consistency within EPA and among other government agencies in the way that industry-specific data is collected, organized and made available to the

public in various databases and publications. Moreover, although NAICS is based on a different organizing principle than SIC, the two classification systems share many similarities. Industry has had several decades to become familiar with SIC so the transition to NAICS as opposed to an alternative industry classification system should be more efficient and less burdensome. Therefore, EPA believes it is appropriate to use NAICS codes for purposes of section 313 reporting.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: March 6, 2003.

Christine Todd Whitman,

Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. Amend § 372.3 by adding the definition for previously classified in alphabetical order to read as follows:

§ 372.3 Definitions.

* * * * *

Previously classified means to have been properly classified, according to § 372.22(b) under a given Standard Industrial Classification (SIC) code, as identified in the Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget.

* * * * *

3. Amend § 372.22, by revising paragraph (b) introductory text and paragraphs (b)(1), (b)(2), (b)(3)(i) and (b)(3)(ii) to read as follows:

§ 372.22 Covered facilities for toxic chemical release reporting.

* * * * *

(b) The facility is in a Standard Industrial Classification (SIC) (as in effect on January 1, 1987) major group or industry code listed in § 372.239a), (for which the corresponding North American Industry Classification System (NAICS) (as in effect on January 1, 1997) subsector and industry codes are listed in § 372.23(b) and 372.23(c)) by virtue of the fact that it meets one of the following criteria:

(1) The facility is an establishment with a primary SIC major group or industry code listed in § 372.23(a), or a primary NAICS subsector or industry code listed in § 372.23(b) or 372.23(c).

(2) The facility is a multi-establishment complex where all establishments have primary SIC major group or industry codes listed in § 372.23(a), or primary NAICS subjector or industry codes listed in § 372.23(b) or 372.23(c).

(3) * * *

(i) The sum of the value of services provided and/or products shipped and/or produced from those establishments that have primary SIC major group or industry codes listed in § 372.23(a), or primary NAICS subjector or industry codes listed in § 372.23(b) or 372.23(c) is greater than 50 percent of the total value of all services provided and/or products shipped from and/or produced by all establishments at the facility.

(ii) One establishment having a primary SIC major group or industry code listed in § 372.23(a), or a primary NAICS subsector or industry codes listed in § 372.23(b) or 372.23(b) contributes more in terms of value of services provided and/or products shipped from and/or produced at the facility than any other establishment within that facilities.

* * * * *

3. Add a new § 372.23 to Subpart B to read as follows:

§ 372.23 SIC and NAICS codes to which this Part applies.

The requirements of this part supply to facilities in the following SIC and NAICS codes. This section contains three listings. Paragraph (a) of this section lists the SIC code to which this part applies. Paragraph (b) of this section list the NAICS codes that correspond to SIC codes 20 through 39 to which this part applies. Paragraph (c) of this section lists the NAICS codes that correspond to SIC codes other than SIC codes 20 through 39 to which this part applies.

(a) SIC codes.

Major group or industry code	Exceptions and/or limitations
10	Except 1011, 1081, and 1094.
12	Except 1241.
20 through 39	
4911, 4931, 4939	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution.
4953	Limited to facilities regulated under the Resources Conservation and Recovery Act, 42 U.S.C. 6921, *et seq.*
5169	
5171	
7389	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis.

(b) NAICS codes that correspond to SIC codes 20 through 39

Subsector code or industry code	Exceptions and/or limitations
311	Except 311119—Exception is limited to facilities primarily engaged in Custom Grain Grinding for Animal Feed (previously classified under SIC 0723, Crop Preparation Services for Market, Except Cotton Ginning); Except 311330—Exeception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores): Except 311340—Exception is limited to facilities primarily engaged in the retail sale of candy, nuts, popcorn and other confections not for immediate consumption made on the premises (previously classified under SIC 5441, Candy, Nut, and Confectionery Stores); Except 311811—Retail Bakeries (previously classified under SIC 5461, Retail Bakeries);

Subsector code or industry code	Exceptions and/or limitations
	Except 311611—Exception is limited to facilities primarily engaged in Custom Slaughtering for individuals (previously classified under SIC 0751, Livestock Services, Except Veterinary, Slaughtering, custom: for individuals);
	Except 311612—Exception is limited to facilities primarily engaged in the cutting up and resale of purchased fresh carcasses for the trade (including boxed beef), and in the wholesale distribution of fresh, cured, and processed (but not canned) meats and lard (previously classified under SIC 5147, Meats and Meat Products);
312	Except 312229—Exception is limited to facilities primarily engaged in providing Tobacco Sheeting Services (previously classified under SIC 7389, Business Services, NEC);
313	Except 313311—Exception is limited to facilities primarily engaged in converting broadwoven piece goods and broadwoven textiles, (previously classified under SIC 5131, Piece Goods Notions, and Other Dry Goods, broadwoven and non-broadwoven piece good converters), and facilities primarily engaged in sponging fabric for tailors and dressmakers (previously classified under SIC 7389, Business Services, NEC (Sponging fabric for tailors and dressmakers));
	Except 313312—Exception is limited to facilities primarily engaged in converting narrow woven Textiles, and narrow woven piece goods, (previously classified under SIC 5131, Piece Goods Notions, and Other Dry Goods, converters, except broadwoven fabric);
314	Except 314121—Exception is limited to facilities primarily engaged in making Custom drapery for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores);
	Except 314129—Exception is limited to facilities primarily engaged in making Custom slipcovers for retail sale (previously classified under SIC 5714, Drapery, Curtain, and Upholstery Stores);
	Except 314999—Exception is limited to facilities primarily engaged in Binding carpets and rugs for the trade, Carpet cutting and binding, and Embroidering on textile products (except apparel) for the trade (previously classified under SIC 7389, Business Services Not Elsewhere Classified, Embroidering of advertising on shirts and Rug binding for the trade);
315	Except 315222—Exception is limited to custom tailors primarily engaged in making and selling men's and boys' suits, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores (custom tailors));
	Except 315223—Exception is limited to custom tailors primarily engaged in making and selling men's and boys' dress shirts, cut and sewn from purchased fabric (previously classified under SIC 5699, Miscellaneous Apparel and Accessory Stores (custom tailors));
	Except 315233—Exception is limited to custom tailors primarily engaged in making and selling bridal dresses or gowns, or women's, misses' and girls' dresses cut and sewn from purchased fabric (except apparel contractors)(dressmakers) (previously classified under SIC Code 5699, Miscellaneous Apparel and Accessory Stores);
316	
321	
322	
323	Except 323114—Exception is limited to facilities primarily engaged in reproducing text, drawings, plans, maps, or other copy, by blueprinting, photocopying, mimeographing, or other methods of duplication other than printing or microfilming (*i.e.,* instant printing) (previously classified under SIC 7334, Photocopying and Duplicating Services, (instant printing));
324	
325	Except 325998—Exception is limited to facilities primarily engaged in Aerosol can filling on a job order or contract basis (previously classified under SIC 7389, Business Services, NEC (aerosol packaging));
326	Except 326212—Tire Retreading, (previously classified under SIC 7534, Tire Retreading and Repair Shops (rebuilding));
331	
332	
333	
334	Except 334611—Software Reproducing (previously classified under SIC 7372, Prepackaged Software, (reproduction of software));
	Except 334612—Exception is limited to facilities primarily engaged in mass reproducing prerecorded Video cassettes, and mass reproducing Video tape or disk (previously classified under SIC 7819, Services Allied to Motion Picture Production (reproduction of Video));
335	Except 335312—Exception is limited to facilities primarily engaged in armature rewinding on a factory basis (previously classified under SIC 7694 (Armature Rewinding Shops (remanufacturing));
336	
337	Except 337110—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture custom wood kitchen cabinets and counter tops (previously classified under SIC 5712, Furniture Stores (custom wood cabinets));
	Except 337121—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture custom made upholstered household furniture (previously classified under SIC 5712, Furniture Stores (upholstered, custom made furniture));
	Except 337122—Exception is limited to facilities primarily engaged in the retail sale of household furniture and that manufacture nonupholstered, household type, custom wood furniture (previously classified under SIC 5712, Furniture Stores (custom made wood nonupholstered household furniture except cabinets));
339	Except 339115—Exception is limited to lens grinding facilities that are primarily engaged in the retail sale of eyeglasses and contact lenses to prescription for individuals (previously classified under SIC 5995, Optical Goods Stores (optical laboratories grinding of lenses to prescription));
	Except 339116—Dental Laboratories (previously classified under SIC 8072, Dental Laboratories);

Subsector code or industry code	Exceptions and/or limitations
111998	Limited to facilities primarily engaged in reducing maple sap to maple syrup (previously classified under SIC 2099, Food Preparations, NEC, Reducing Maple Sap to Maple Syrup);
211112	Limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic Chemicals, NEC (recovering sulfur from natural gas));
212111 212112 212113	
212324	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating kaolin and clay (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1455));
212325	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating clay and ceramic and refractory minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1459));
212393	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1479));
212399	Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals (previously classified under SIC 3295, Minerals and Earths, Ground or Otherwise Treated (grinding, washing, separating, etc. of minerals in SIC 1499));
488390	Limited to facilities that are primarily engaged in providing routine repair and maintenance of ships and boats from floating drydocks (previously classified under SIC 3731, Shipbuilding and Repairing (floating drydocks not associated with a shipyard));
511110 511120 511130	
511140	Except facilities that are primarily engaged in furnishing services for direct mail advertising including Address list compilers, Address list publishers, Address list publishers and printing combined, Address list publishing, Business directory publishers, Catalog of collections publishers, Catalog of collections publishers and printing combined, Mailing list compilers, Directory compilers, and Mailing list compiling services (previously classified under SIC 7331, Direct Mail Advertising Services (mailing list compilers));
511191 511199 512220	
512230	Except facilities primarily engaged in Music copyright authorizing use, Music copyright buying and licensing, and Music publishers working on their own account (previously classified under SIC 8999, Services, NEC (music publishing));
541710	Limited to facilities that are primarily engaged in Guided missile and space vehicle engine research and development (previously classified under SIC 3764, Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts), and in Guided missile and space vehicle parts (except engines) research and development (previously classified under SIC 3769, Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified);
811490	Limied to facilities that are primarily engaged in repairing and servicing pleasure and sail boats without retailing new boats (previously classified under SIC 3732, Boat Building and Repairing (pleasure boat building);

(c) NAICS codes that correspond to SIC codes other than SIC codes 20 through 39.

Subsector or industry code	Exceptions and/or limitations
212111 212112 212113 212221 212222 212231 212234 212299	
221111	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221112	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221113	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221119	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
221121	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.

Subsector or industry code	Exceptions and/or limitations
221122	Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.
422690 422710	
562112	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC);
562211	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562212	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562213	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562219	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*
562920	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*

4. Amend § 372.38 by revising paragraphs (e), (g), and (h) to read as follows:

§ 372.38 Exemptions.

* * * * *

(e) *Certain owners of leased property.* The owner of a covered facility is not subject to reporting under § 372.30 if such owner's only interest in the facility is ownership of the real estate upon which the facility is operated. This exemption applies to owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments in any SIC code or NAICS code in § 372.23 that is subject to the requirement of this part, where the owner has no other business interest in the operation of the covered facility.

* * * * *

(g) *Coal extraction activities.* If a toxic chemical is manufactured, processed, or otherwise used in extraction by facilities in SIC code 12, or in NAICS codes 212111, 212112 or 212113, a person is not required to consider the quantity of the toxic chemical so manufactured, processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

(h) Metal mining overburden. If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, or in NAICS codes 212221, 212222, 212231, 212234 or 212299, a person is not required to consider the quantity of the toxic chemical so processed; or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

5. Amend § 372.45 by revising paragraph (a)(1) to read as follows:

§ 372.45 Notification about toxic chemicals.

(a) * * *

(1) Is in SIC codes 20 through 39 or a NAICS code that corresponds to SIC codes 20 through 39 as set forth in § 372.22(b).

* * * * *

6. Amend § 372.85 by revising paragraph (b)(5) to read as follows:

§ 372.85 Toxic chemical release reporting form and instructions.

* * * * *

(b) * * *

(5) The four-digit SIC code(s) and the six-digit NAICS code(s) for the facility or establishments in the facility through the reporting period ending July 1, 2004. After the reporting period ending July 1, 2004, the six-digit NAICS code(s) for the facility or establishments in the facility.

* * * * *

7. Amend § 372.95 by revising paragraph (b)(10) to read as follows:

§ 372.95 Alternate threshold certification and instructions.

* * * * *

(b) * * *

(10) The four digit-SIC code(s) and the six-digit NAICS code(s) for the facility or establishments in the facility through the reporting period ending July 1, 2004. After the reporting period ending July 1, 2004, the six-digit NAICS code(s) for the facility or establishments in the facility.

* * * * *

[FR Doc. 03–6582 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2003–14372]

RIN 2127–AJ01

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 2000 calendar year before October 25, 2003. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than May 20, 2003. Insurers listed in the appendices are required to submit reports on or before October 25, 2003.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice. Submit your comments in writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. You may also submit written comments to the docket on a computer diskette. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* You may visit the Docket

from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita R. Ballard, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail *cballard@nhtsa.dot.gov.* Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, *i.e.*, any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on July 16, 2002 (67 FR 46608). Based on the 2000 calendar year data market shares from A.M. Best, we propose to remove Farmers Insurance Group and St. Paul Companies from Appendix A and to add Zurich/Farmers Group to Appendix A.

Each of the 19 insurers listed in Appendix A is required to file a report before October 25, 2003, setting forth the information required by part 544 for each State in which it did business in the 2000 calendar year. As long as these 19 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2000, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2000 calendar year data for market shares from A.M. Best, we propose no changes to Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 2000 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2003, and set forth the information required by part 544. As long as these eight insurers

remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 2000, NHTSA proposes to remove Ford Rent-A-Car System from Appendix C and to add Thrifty Rental Car System Inc. and Ryder TRS to Appendix C. Each of the 18 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 2000 no later than October 25, 2003, and set forth the information required by part 544. As long as those 18 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2003 (*see http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $86,100 for any insurer added to Appendix A, $34,440 for any insurer added to Appendix B, and $9,936 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove two companies and add one company; for Appendix B, the agency would propose no change; and for Appendix C, the agency would remove one company and add two companies. The agency estimates that the net effect of this proposal, if made final, would be a cost decrease to insurers, as a group of approximately $76,164.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Carlita R. Ballard, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: cballard@nhtsa.dot.gov;* or

c. *Fax:* (202) 493–2290.

IV. Comments

Submission of Comments

1. How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, NHTSA tries to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filling the document electronically.

3. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How Do I Submit Confidential Business Information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR part 512).

5. Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above, in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on ''search.''
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number was ''NHTSA 1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. The ''pdf'' versions of the documents are word searchable.

V. Conclusion

Based on the foregoing, we are proposing to revise Appendices A, B, and C of 49 CFR 544, insurer reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is proposed to be revised as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (*e.g.,* the report due by October 25, 2003, will contain the required information for the 2000 calendar year).

* * * * *

3. Appendix A to part 544 is proposed to be revised as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group
CNA Insurance Companies
Erie Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Nationwide Group
Progressive Group
SAFECO Insurance Companies
State Farm Group
Travelers/Citigroup Company
USAA Group
Zurich/Farmers Group [1]

4. Appendix B to part 544 is proposed to be revised as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club (Michigan)

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2003.

Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to part 544 is proposed to be revised as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Resources International)
Associates Leasing Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
Ryder TRS [1]
Thrifty Rental Car System Inc.[1]
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

Issued on: March 4, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–5629 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[ID. 031103A]

Fisheries Off West Coast States and in the Western Pacific;Pacific Coast Groundfish Fishery; Renewal of Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Renewal of Exempted Fishing Permits (EFPs) for monitoring incidental catch of salmon and groundfish in the Washington-Oregon-California (WOC) shore-based Pacific whiting fishery.

SUMMARY: NMFS announces the receipt of an application, and NMFS' intent to renew EFPs for vessels participating in an observation program to monitor the incidental take of salmon and groundfish in the shore-based component of the Pacific whiting fishery. The EFPs are necessary to allow trawl vessels fishing for Pacific whiting to delay sorting their catch, and thus to retain prohibited species and groundfish in excess of cumulative trip limits until the point of offloading. These activities are otherwise prohibited by Federal regulations.

DATES: Comments must be received by April 7, 2003. The EFPs will be effective no earlier than April 1, 2003, and would expire no later than May 31, 2004, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

ADDRESSES: Copies of the EFP application are available from Becky Renko Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Carrie Nordeen (206)526–6140.

SUPPLEMENTARY INFORMATION: This action is authorized by Magnuson-Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745 which state that EFPs may be used to authorize fishing activities that would otherwise be prohibited. The information gathered through these EFPs may lead to future rulemakings.

NMFS received an application requesting renewal of these EFPs from the States of Washington, Oregon, and California at the November 2002 Pacific Fishery Management Council (Council) meeting in San Francisco, CA. An opportunity for public testimony was provided during the Council meeting. The Council recommended that NMFS issue the EFPs, as requested by the States.

Renewal of these EFPs, to about 40 vessels, would continue an ongoing program to collect information on the incidental catch of salmon and groundfish in whiting harvests delivered to shoreside processing facilities by domestic trawl vessels operating off WOC. Because whiting deteriorates rapidly, it must be handled quickly and immediately chilled to maintain the quality. As a result, many vessels dump catch directly or near directly into the hold and are unable to effectively sort their catch.

The issuance of EFPs will allow vessels to delay sorting of groundfish catch in excess of cumulative trip limits and prohibited species until offloading. Delaying sorting until offloading will allow state biologists and industry-hired samplers to collect incidental catch data for total catch estimates and will enable whiting quality to be maintained. Without an EFP, groundfish regulations at 50 CFR 660.306(b) require vessels to sort their prohibited species catch and return them to sea as soon as practicable with minimum injury. To allow state biologists and industry-hired samplers to sample unsorted whiting, it is also necessary to include provisions for potential overages of groundfish trip limits which are prohibited by regulations at 50 CFR 660.306(h).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 18, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–6849 Filed 3–20–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 55
Friday, March 21, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Intergovernmental Advisory Committee

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to renew Federal Advisory Committee.

SUMMARY: The Department of Agriculture, in consultation with the Department of the Interior, intends to renew the Intergovernmental Advisory Committee (IAC). This renewal is in response to the continued need for the IAC to provide intergovernmental advice on coordinating the implementation of the Record of Decision of April 13, 1994, for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl. The IAC also provides advice and recommendations to promote integration and coordination of forest management activities between Federal and non-Federal entities.

ADDRESSES: Copies of the April 13, 1994, Record of Decision can be obtained electronically at *http://www.reo.gov/library/reports/newsandga.pdf*. Paper copies can be obtained from the Office of Strategic Planning, P.O. Box 3623, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: Geraldine Bower, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA (202) 205–1022.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Department of Agriculture, in consultation with the Department of the Interior, intends to renew the Intergovernmental Advisory Committee (IAC) to the Regional Interagency Executive Committee (RIEC). The purpose of the RIEC is to facilitate the coordinated implementation of the Record of Decision (ROD) signed April 13, 1994, for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl. The RIEC consists of representatives of the following Federal agencies: Forest Service, Natural Resources Conservation Service, Bureau of Indian Affairs, Bureau of Land Management, National Marine Fisheries Service, National Park Service, U.S. Fish and Wildlife Service, U.S. Geological Survey Biological Resources Division, Environmental Protection Agency, and U.S. Army Corps of Engineers. The purpose of the IAC is to advise the RIEC on coordinating the implementation of the ROD. The IAC will provide advice and recommendations to promote integration and coordination of forest management activities between Federal and non-Federal entities.

The IAC is in the public interest in connection with the duties and responsibilities of the managing agencies for developing an ecosystem management approach that is consistent with statutory authority for land use planning. Ecosystem management at the province level requires improved coordination among governmental entities responsible for land management decisions and the public they serve (provinces are defined in the ROD at E19).

The chair of the IAC will alternate annually between representatives of the Forest Service and the Bureau of Land Management. The Executive Director, Regional Ecosystem Office, will serve as the Designated Federal Official under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App.). Any vacancies on the committee will be filled in the manner in which the original appointment was made.

A meeting notice will be published in the **Federal Register** within 15 to 45 days before a scheduled meeting date. All meetings are generally open to the public and may include a ''public forum'' that may offer 5–10 minutes for participants to present comments to the advisory committee. Alternates may choose not to be active during this session on the agenda. The chair of the given committee ultimately makes the decision whether to offer time on the agenda for the public to speak to the general body.

Renewal of the IAC does not require amendment of Bureau of Land Management or Forest Service planning documents because it does not affect the standards and guidelines or land allocations. The Bureau of Land Management and Forest Service will provide further notice, as needed, for additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the ROD.

Equal opportunity practices will be followed in all appointments to the advisory committee. To ensure that the recommendations of the IAC have taken into account the needs of diverse groups served by the Departments, membership will, to the extent practicable, include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: March 12, 2003.

Clyde Thompson,

Associate Assistant Secretary for Administration.

[FR Doc. 03–6770 Filed 3–20–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–092–2]

Aventis CropScience; Availability of Determination of Nonregulated Status for Cotton Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Aventis CropScience cotton designated as Transformation Event LLCotton25, which has been genetically engineered for tolerance to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Aventis CropScience in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This

notice also announces the availability of our written determination and our finding of no significant impact.

EFFECTIVE DATE: March 10, 2003.

ADDRESSES: You may read a copy of the determination, an environmental assessment and finding of no significant impact, the petition for a determination of nonregulated status submitted by Aventis CropScience, and all comments received on the petition and the environmental assessment in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the determination or environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 12, 2002, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 02–042–01p) from Aventis CropScience (Aventis) of Research Triangle Park, NC, requesting a determination of nonregulated status under 7 CFR part 340 for cotton (*Gossypium hirsutum* L.) designated as Transformation Event LLCotton25 (LLCotton25), which has been genetically engineered for tolerance to the herbicide glufosinate. The Aventis petition states that the subject cotton should not be regulated by APHIS because it does not present a plant pest risk.

On December 16, 2002, APHIS published a notice in the **Federal Register** (67 FR 77034–77035, Docket No. 02–092–1) announcing that the Aventis petition and an environmental assessment (EA) were available for public review. This notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject cotton and food products developed from it. APHIS received two comments on the petition and the EA during the 60-day comment period which ended February 14, 2002. The comments were received from a cotton industry organization and a cotton farmer, and both supported nonregulated status for LLCotton25.

LLCotton25 has been genetically engineered to contain a *bar* gene isolated from *Streptomyces hygroscopicus* strain ATCC21705. The *bar* gene encodes phosphinothricin-N-acetyltransferase (PAT), and the PAT enzyme catalyzes the conversion of L-phosphinothricin, the active ingredient in glufosinate, to an inactive form, thus conferring tolerance to the herbicide. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens. Agrobacterium*-mediated gene transfer was used to transfer the added genes into the recipient Coker 312 cotton variety.

LLCotton25 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This cotton has been field tested since 1999 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject cotton, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Aventis, a review of other scientific data, field tests of the subject cotton, and comments submitted by the public, APHIS has determined that LLCotton25: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become weedy than the non-transgenic parental line or other cultivated cotton; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; (5) will not harm threatened or endangered species or organisms that are beneficial to agriculture; and (6) should not reduce the ability to control pests and weeds in cotton or other crops. Therefore, APHIS has concluded that the subject cotton and any progeny derived from hybrid crosses with other nontransformed cotton varieties will be as safe to grow as cotton in traditional breeding programs that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that Aventis' LLCotton25 is no longer considered a regulated article under APHIS'' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject cotton or its progeny. However, importation of LLCotton25 and seeds capable of propagation are still subject to the restrictions found in APHIS'' foreign quarantine notices in 7 CFR part 319 and imported seed regulations in 7 CFR part 361.

National Environmental Policy Act

An EA was prepared to examine the potential environmental impacts associated with a determination of nonregulated status for Aventis' LLCotton25. The EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that LLCotton25 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 18th day of March, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–6798 Filed 3–20–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–

393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, April 17, 2003 in Potlatch, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on April 17 begins at 10 a.m. (PST), at the City Library, Potlatch, Idaho. Agenda topics will include discussion of potential projects. A public forum will begin at 2 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935–2513.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 03–6834 Filed 3–20–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in Payson, Arizona. The purpose of the meeting is to review and approve projects for funding and approve evaluation criteria for the projects.

DATES: The meeting will be held March 28, 2003, at 1 p.m. An alternate date of April 11, 2003, will be used if weather precludes meeting on March 28th.

ADDRESSES: The meeting will be held at the Gila County Community College, Community Room, at 201 Mud Springs Road, Payson, Arizona. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee may file written statements with the Committee staff three weeks before the meeting. Opportunity for public input will be provided.

Dated: March 17, 2003.

John C. Bedell,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 03–6880 Filed 3–20–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 20, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: 7 CFR 1744-C, Advance and Disbursement of Funds—Telecommunications.

OMB Control Number: 0572–0023.

Type of Request: Revision of a currently approved information collection package.

Abstract: The Rural Utilities Service (RUS) manages the Telecommunications loan program in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

In addition, the Farm Security and Rural Investment Act of 2002 (Pub. L. 101–171) amended the RE Act to add title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. RUS therefore requires Telecommunications and Broadband borrowers to submit RUS Form 481, Financial Requirement Statement. This form implements certain provisions of the standard RUS loan documents by setting forth requirements and procedures to be followed by borrowers in obtaining advances and making disbursements of loan funds.

Estimate of Burden: Public reporting for this collection of information is estimated to average 1 hour per response.

Respondents: Business or other for profit, not-for-profit institutions.

Estimated Number of Respondents: 815.

Estimated Number of Responses per Respondent: 4.5.

Estimated Total Annual Burden on Respondents: 3,660 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 7, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–6800 Filed 3–20–03; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 20, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, Naval Air Facility, Camp Springs, Maryland, Naval Research Laboratory, Washington, DC, Washington Navy Yard, Anacostia Annex (ANA), Washington, DC, Washington Navy Yard, Washington, DC.
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland.
Contract Activity: Engineering Field Activity Chesapeake, Washington Navy Yard, DC.
Service Type/Location: Document Destruction, Aberdeen Proving Ground, Northeast Civilian Personnel Operation Center, Aberdeen Proving Ground, Maryland.
NPA: The Arc Northern Chesapeake Region, Incorporated, Aberdeen, Maryland.
Contract Activity: Aberdeen Proving Grounds, Aberdeen Maryland.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–6847 Filed 3–20–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 20, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 17, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 2498) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Base Supply Center, U.S. Coast Guard Integrated Support Command, Kodiak, Alaska.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.
Contact Activity: U.S. Coast Guard Integrated Support Command, Kodiak, Alaska.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–6848 Filed 3–20–03; 8:45 am]

BILLING CODE 6353–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of antidumping duty administrative review.

SUMMARY: On January 22, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 3009) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from Argentina. The period of review (POR) is May 11, 2001, to November 30, 2002. This review has now been partially rescinded for certain companies because the requesting party withdrew its request.

EFFECTIVE DATE: March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella, Enforcement Group III, Office 8, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398 or (202) 482–0194, respectively.

Scope of the Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the Department's written description of the merchandise under this order is dispositive.

Background

On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively ''petitioners'') requested an administrative review of the antidumping duty order (See Notice of Antidumping Duty Order: Honey from Argentina, 66 FR 63672 (December 10, 2001)) on honey from Argentina in response to the Department's notice of opportunity to request a review published in the **Federal Register**. The petitioners requested the Department conduct an administrative review of entries of subject merchandise made by 21 Argentine producers/exporters. The Department initiated the review for all companies. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 68 FR 3009 (January 22, 2003).

On January 17, 2003, petitioners submitted a withdrawal of request for review of the following 14 companies: Centauro S.A., Comexter Robinson S.A., Compa Inversora Platense S.A., ConAgra Argentina S.A., Coope-Riel Ltda., Cooperativa DeAgua Potable y Otros, Establecimiento Don Angel S.r.L., Food Way S.A., Francisco Facundo Rodriguez, Jay Bees, Jose Luis Garcia, Navicon S.A., Parodi Agropecuaria S.A., and Times S.A. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. The petitioners made a request for withdrawal within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1). Since the petitioner was the only party to request the administrative review of the above listed companies, we have accepted the withdrawal request. Therefore, for all the above listed companies we are rescinding this review of the antidumping duty order on honey from Argentina covering the period May 11, 2001, through November 30, 2002.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: March 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6845 Filed 3–20–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–881]

Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Anya Naschak at (202) 482–6375, Ann Barnett-Dahl at (202) 482–3833, or Helen Kramer at (202) 482–0405; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary determination in the antidumping duty investigation of certain malleable iron pipe fittings from the People's Republic of China from April 8, 2003, until May 28, 2003. These postponements are made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

SUPPLEMENTARY INFORMATION:

Postponement of Due Date for Preliminary Determination

On November 19, 2002, the Department of Commerce (''the Department'') initiated the antidumping duty investigation of imports of certain malleable iron pipe fittings (malleable pipe fittings) from the People's Republic of China (PRC). See 67 FR 70579 (November 25, 2002). The notice of initiation stated that we would issue our preliminary determination no later than April 8, 2003, 140 days after the date of initiation. See id.

Under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), if the petitioners make a timely request for an extension of the period within which the preliminary determination must be made under subsection 733(b)(1), then the Department may postpone making the preliminary determination until not later than the 190th day after the date on which the administering authority initiated the investigation.

On February 28, 2003, the petitioners, Anvil International, Inc. and Ward Manufacturing, Inc. made a timely request for a 50–day postponement, pursuant to section 733(c)(1)(A) of the Act and 19 CFR § 351.205(e). The Department has reviewed the petitioners' request for postponement and agrees to postpone this preliminary determination.

Therefore, in accordance with section 733(c)(1)(A), the Department is postponing the preliminary determination in this investigation until May 28, 2003, which is 190 days from November 19, 2002, the date on which the Department initiated this investigation.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR § 351.205(f).

Dated: March 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6841 Filed 3–20–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review of stainless steel plate in coils from Taiwan.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel plate in coils from Taiwan.

EFFECTIVE DATE: March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2002, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review of the Antidumping Duty Order on Stainless Steel Plate in Coils from Taiwan for the period May 1, 2001 through April 30, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 30356 (May 6, 2002). On May 31, 2002, petitioners, Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steel Workers of American, AFL-CIO/CLC, and Zanesville Armco Independent Organization, requested that the Department conduct an administrative review. On June 25, 2002, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by Yieh United Steel Corporation (''YUSCO'') and Ta Chen Stainless Pipe Company, Ltd. (''Ta Chen'') for the period May 1, 2001 through April 30, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 67 FR 42753 (June 25, 2002). On February 5, 2003, the Department extended the preliminary results of this administrative review by 60 days. *See Stainless Steel Plate in Coils from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review* 68 FR 5869 (February 5, 2003). The preliminary results are currently due no later than April 1, 2003.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. After the development of the record in this case, the Department finds it necessary to collect more information and data. The Department conducted a customs inquiry in this case. As a result of this preliminary communication with the Customs Service, the Department was recently made aware of certain information that was not previously on the record. The Department needs additional time to gather information from the respondent and the U.S. Customs Service. For these reasons, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the preliminary results by 60 days, until no later than June 2, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

Dated March 13, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–6844 Filed 3–20–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Proposed Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act and Request for Public Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for public comment.

SUMMARY: On January 8, 2003, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) adopted the report of the WTO Appellate Body in United States—Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212/AB/R (December 9, 2002), that recommends that the United States bring its administrative practice regarding privatization, both as such and as applied in twelve challenged administrative determinations, into conformity with its obligations under the WTO Subsidies and Countervailing Measures Agreement (Subsidies Agreement). Section 123 of the Uruguay Round Agreements Act (URAA) governs changes in the Department of Commerce's (Department) practice when a dispute settlement panel or the Appellate Body of the World Trade Organization finds such practice to be inconsistent with any of the Uruguay Round agreements. Consistent with section 123(1)(g)(C), we are hereby publishing the proposed modification and the explanation for the proposed modification of the Department's privatization methodology, and are providing opportunity for public comment.

DATES: Written affirmative comments must be received by 5 p.m. on April 11, 2003. Written rebuttal comments must be received by 5 p.m. on the 28th day after the date of publication of this notice. If the applicable time limit expires on a non-business day, comments that are filed by 5 p.m. on the next business day will be accepted.

Submission of Comments: Parties should submit four written copies and an electronic copy (in WordPerfect, MS Word, or Adobe Acrobat format) of all affirmative and rebuttal comments to Jeffrey May, Director of Policy, Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Attention: Privatization Methodology. Each party submitting comments is requested to include his or her name

and address, and give reasons for any recommendation. Affirmative comments must be double-spaced and limited, in total, to twenty-five pages. Rebuttal comments must be double-spaced and limited, in total, to ten pages. All comments will be made available for public viewing in the Department's Central Records Unit, which is located in room B–099 of the main Department building.

FOR FURTHER INFORMATION CONTACT: Greg Campbell, Office of Policy, Import Administration, U.S. Department of Commerce, Room 3712, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2239.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). Citation to ''section 123'' refers to section 123 of the URAA.

Background

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit in *Delverde Srl* v. *United States,* 202 F.3d 1360, 1365 (Fed. Cir. 2000), reh'g granted in part (June 20, 2000) (Delverde III), rejected the Department's application of its change-in-ownership methodology, as explained in the General Issues Appendix, to the facts before it in that case.[1] The Federal Circuit held that the Act, as amended, did not allow the Department to presume conclusively that the subsidies granted to the former owner of Delverde's corporate assets automatically ''passed through'' to Delverde following the sale. Rather, where a subsidized company has sold assets to another company, the Court held that the Act requires the Department to examine the particular facts and circumstances of the sale and determine whether the purchasing company directly or indirectly received both a financial contribution and benefit from the government. *Delverde III,* 202 F.3d at 1364–1368.

Pursuant to the Federal Circuit's finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000, following the Federal Circuit's decision in Delverde III, and also applied in Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review, 66 FR 2885 (January 12, 2001). The first step under this methodology was to determine whether the legal person to which the subsidies were given was, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determined that the two persons were distinct, we then analyzed whether a subsidy was provided to the purchasing entity as a result of the change-in-ownership transaction. If we found, however, that the original subsidy recipient and the current producer/exporter were the same person, then we determined that the person continued to benefit from the original subsidies, and its exports were subject to countervailing duties to offset those subsidies.

This ''same-person'' privatization methodology is currently the subject of appeals to the Federal Circuit in three cases: *Acciai Speciali Terni S.p.A.* v. *United States,* Ct. No. 01–00051; *Allegheny Ludlum Corp.* v. *United States,* Ct. Nos. 03–1189 and 03–1248; and *GTS Industries, S.A.* v. *United States,* Ct. Nos. 03–1175 and 03–1191.

On August 8, 2001, the European Communities requested that the DSB establish a dispute settlement panel to examine the practice of the United States of imposing countervailing duties on certain products exported from the European Communities by privatized companies. A panel was established, the case was briefed and argued, and the Panel circulated its final report on July 31, 2002. United States—Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212/R (July 31, 2002) (Panel Report). The United States appealed certain findings and conclusions in the Panel Report, and the Appellate Body circulated its report on December 9, 2002. United States—Countervailing Measures Concerning Certain Products from the European Communities, WT/DS212/AB/R (December 9, 2002) (AB Report). The AB Report, and the Panel Report as modified by the AB Report, were adopted by the DSB on January 8, 2003. On January 27, 2003, the United States informed the DSB that it would implement the recommendations and rulings of the DSB in a manner consistent with its WTO obligations.

Section 123 of the URAA is the applicable provision governing the actions of the Department when a WTO dispute settlement panel or the Appellate Body finds that a regulation or practice of the Department is inconsistent with any of the Uruguay Round agreements. Specifically, section 123(g)(1) provides that, ''[i]n any case in which a dispute settlement panel or the Appellate Body finds in its report that a regulation or practice of a department or agency of the United States is inconsistent with any of the Uruguay Round Agreements, that regulation or practice may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until * * * (C) the head of the relevant department or agency has provided an opportunity for public comment by publishing in the **Federal Register** the proposed modification and the explanation for the modification; * * *.'' Accordingly, consistent with section 123(g)(1)(C), we are publishing this proposed modification and the explanation for the proposed modification of the Department's privatization methodology, and are providing opportunity for public comment.

Legal Context

To provide a context for the discussion of changes to our new privatization methodology, we first review the statutory provisions governing the Department's analysis of changes in ownership in the countervailing duty context, as explained in the Statement of Administrative Action (SAA) and interpreted by the Court. The statute provides, at section 771(5)(F), that ''[a] change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.'' The SAA explains that ''* * * the term 'arm's-length transaction' means a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.'' SAA, at 258. The SAA further explains that

> [s]ection 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. * * * The issue of the privatization of a state-owned firm can be extremely complex and multifaceted. While it is the Administration's intent that Commerce retain the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies, Commerce must exercise this discretion carefully through its consideration of the facts of each case and its determination

[1] Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37225 (July 9, 1993).

of the appropriate methodology to be applied.
Id.

The Federal Circuit reviewed the statute's change-in-ownership provisions in Delverde III. In that decision, in striking down the Department's previous ''gamma'' privatization methodology on the basis that, *inter alia,* it was a *per se* rule, the Federal Circuit opined

> Had Commerce fully examined the facts, it might have found that [the respondent] paid full value for the assets and thus received no benefit from the prior owner's subsidies, or Commerce might have found that [the respondent] did not pay full value and thus did indirectly receive a 'financial contribution' and a 'benefit' from the government by purchasing its assets from a subsidized company 'for less than adequate remuneration.' * * * Commerce might have reached the conclusion that [the respondent] indirectly received a subsidy by other means. Delverde III, 202 F.3d at 1368.

In light of the SAA and the Court's findings, we believe the statute grants the Department flexibility and discretion in the countervailing duty context for analyzing changes in ownership, including privatizations.

WTO Findings and Recommendations

We now turn to the findings of the Panel and Appellate Body. At the outset, the Panel clarified that its findings apply only to changes in ownership that involve privatizations in which the government retains no controlling interest in the privatized producer and transfers all or substantially all the property. Panel Report at para. 7.62; noted in AB Report at paras. 85 and 117, footnote 177. The Panel then stated that, ''[w]hile Members may maintain a rebuttable presumption that the benefit from prior financial contributions (or subsidization) continues to accrue to the privatized producer, privatization at arm's length and for fair market value is sufficient to rebut such a presumption. Panel Report at para. 7.82, upheld at AB Report at para 126. This finding led the Panel to hold, *inter alia,* that the Department's same-person methodology is contrary to the requirements of the Subsidies Agreement.

While the Appellate Body agreed with the Panel that the same-person methodology is contrary to the requirements of the Subsidies Agreement, it clarified that

> [p]rivatization at arm's length and for fair market value *may* result in extinguishing the benefit. Indeed, we find that there is a rebuttable presumption that a benefit ceases to exist after such a privatization. Nevertheless, it does not *necessarily* do so. There is no inflexible rule *requiring* that investigating authorities, in future cases, *automatically* determine that a 'benefit' derived from pre-privatization financial contributions expires following privatization at arm's length and for fair market value. (Emphasis in original)

AB Report at para. 127.

The Appellate Body identified examples of circumstances where the conditions necessary for ''market prices'' to fairly and accurately reflect subsidy benefits are not present, or are ''severely affected'' by the government's economic and other policies:

> Markets are mechanisms for exchange. Under certain conditions (*e.g.*, unfettered interplay of supply and demand, broad-based access to information on equal terms, decentralization of economic power, an effective legal system guaranteeing the existence of private property and the enforcement of contracts), prices will reflect the relative scarcity of goods and services in the market. Hence, the actual exchange value of the continuing benefit of past non-recurring financial contributions bestowed on the state-owned enterprise will be fairly reflected in the market price. However, such market conditions are not necessarily always present and they are often dependent on government action.
>
> Of course, every process of privatizing public-owned productive assets takes place within the concrete circumstances prevailing in the market in which the sale occurs. Consequently, the outcome of such a privatization process, namely the price that the market establishes for the state-owned enterprise, will reflect those circumstances. However, governments may choose to impose economic or other policies that, albeit respectful of the market's inherent functioning, are intended to induce certain results from the market. In such circumstances, the market's valuation of the state-owned property may ultimately be severely affected by those government policies, as well as by the conditions in which buyers will subsequently be allowed to enjoy property.
>
> The Panel's absolute rule of ''no benefit'' may be defensible in the context of transactions between two private parties taking place in reasonably competitive markets; however, it overlooks the ability of governments to obtain certain results from markets by shaping the circumstances and conditions in which markets operate. Privatizations involve complex and long-term investments in which the seller—namely the government—is not necessarily always a passive price taker and, consequently, the ''fair market price'' of a state-owned enterprise is not necessarily always unrelated to government action. In privatizations, governments have the ability, by designing economic and other policies, to influence the circumstances and the conditions of the sale so as to obtain a certain market valuation of the enterprise.

AB Report at paras. 122–124.

Accordingly, the Appellate Body reversed the Panel's conclusion that once an importing Member has determined that a privatization has taken place at arm's length and for fair market value, it *must* reach a conclusion that no benefit resulting from the prior financial contribution continues to accrue to the privatized producer. *AB Report* at paras. 161(b). However, the Appellate Body nevertheless found the Department's same-person privatization methodology to be inconsistent with the WTO obligations of the United States because, under that methodology, where the entity that produced the subject merchandise was the very same entity that received the subsidy, the Department could not find that an arm's-length, fair market value privatization transaction extinguished the pre-privatization subsidy benefit. Accordingly, the Appellate Body recommended that the DSB request the United States to bring its measures and administrative practice (*i.e.*, the same-person methodology) into conformity with its obligations under the Subsidies Agreement. *AB Report* at para. 162.

Proposed Methodology

Pursuant to the statement of the United States to the DSB that we would implement the recommendations and ruling of the DSB in this matter, and in light of the Department's flexibility and discretion under the statute in analyzing changes in ownership, we propose the following new privatization methodology that is fully consistent with the statute.

This proposed methodology is structured as a sequence of rebuttable presumptions, reflecting the conclusions of the Panel and Appellate Body. The ''baseline presumption'' is that non-recurring subsidies can benefit the recipient over a period of time (*i.e.*, allocation period) normally corresponding to the average useful life of the recipient's assets. However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a privatization occurred in which the government sold its ownership of all or substantially all of a company or its assets, retaining no controlling interest in the company or its assets, and the sale was an arm's-length transaction for fair market value.

Our first point of inquiry under this proposed methodology, therefore, is whether the change in ownership in fact involves a government's sale to a private party of all or substantially all of a subsidized company or its assets, with

the government retaining no controlling interest in the company or its assets. If we determine that the government has not transferred, as a result of the sale, ownership and effective control over all or substantially all of the company or its assets, then our analysis of the transaction will stop and the baseline presumption of a continuing benefit will not be rebutted. Otherwise, we will proceed to a consideration of whether the sale was at arm's length for fair market value.

In considering whether the evidence presented demonstrates that the transaction was conducted at arm's length, we will be guided by the SAA's definition of an arm's-length transaction, noted above, as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties.

With regard to an analysis of the transaction price, there is no statutory definition of fair market value, nor does the SAA give any guidance in this area.[2] We note, however, that in the context of several recent remand redeterminations in privatization cases before the Court of International Trade (CIT), the Department has applied a process-oriented approach to analyzing the facts and circumstances of particular privatizations and the resulting value paid.[3] Given that certain of these redeterminations are now on appeal before the Federal Circuit, our approach and findings in these remand redeterminations may or may not reflect the full extent of the analysis of the transaction appropriate under this proposed new methodology. However, the CIT remand redeterminations may provide a useful initial framework for an approach to determining whether a transactions price was fair market value.

The basic question before us in analyzing fair market value is whether the government, in its capacity as seller, sought and received, in the form of monetary or equivalent compensation, the full amount that the company or its assets were actually worth under existing market conditions.[4] Accordingly, in determining whether the evidence presented, including, *inter alia,* information on the process through which the sale was made, demonstrates that the transaction price was fair market value, we propose the following non-exhaustive list of factors that might be considered.[5]

(1) Artificial barriers to entry: Did the government impose exclusions on foreign purchasers or purchasers from other industries, or overly burdensome/unreasonable bidder qualification requirements that artificially suppressed demand for the company?[6]

(2) Independent analysis: Did the government perform due diligence in determining the appropriate sales price, and did it follow the recommendations of any independent analysis, indicating that maximizing its return was the primary consideration?

(3) Highest bid: Was the highest bid accepted and was the price paid in cash or close equivalent (and not, *e.g.*, with an imbalanced bond-for-equity swap), again indicating that maximizing its return was the government's primary consideration?

(4) Committed investment: Were there price discounts or other inducements in exchange for promises of additional future investment that private, commercial sellers would not normally seek (*e.g.*, retaining redundant workers, building or maintaining unwanted capacity), indicating that maximizing its return was not the government's primary consideration?

If we determine that the evidence presented does not demonstrate that the privatization was at arm's length for fair market value, then we will find that the company continues to benefit from subsidies. Otherwise, if it is demonstrated that the privatization was at arm's length for fair market value, any subsidies will be presumed to be extinguished and, therefore, to be non-countervailable.

However, a party can rebut this presumption of extinguishment by demonstrating that, at the time of the privatization, the broader conditions necessary for the transaction price to fairly and accurately reflect the subsidy benefit were not present, or were severely distorted by government action (or, where appropriate, inaction).[7] In other words, although in our analysis we may find that the sale price was a ''market value,'' parties can demonstrate that the market itself was so distorted by the government that there is a reasonable basis for believing that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action.[8] A non-exhaustive list of factors that might be considered in determining whether these broader market distortions existed might include:

1. *Basic Conditions:* Are the basic requirements for a properly functioning market present in the economy in general as well as in the particular industry or sector, including unfettered interplay of supply and demand, broad-based and equal access to information, decentralization of economic power including effective safeguards against collusive behavior, effective legal guarantees and enforcement of contracts and private property?[9]

2. *Related Incentives:* Has the government used the prerogatives of government in other areas to facilitate, or affect the outcome of, a sale in a way that a private seller could not, *e.g.*, by using its authority to tax or set duty rates to make the sale more attractive to potential purchasers generally, or to particular (*e.g.*, domestic) purchasers?

3. *Legal requirements:* Where there special regulations pertaining to this privatization (or privatizations generally) affecting worker retention, etc., that distorted the market price of the company or its assets?

4. *Creation/Maintenance:* Did the presence of other heavily subsidized companies severely distort the market price of the company or its assets in that industry?

Where a party demonstrates that the broader market or economic environment was severely distorted by government action such that there is a reasonable basis for believing that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action, the presumption of extinguishment will be rebutted. Where a party does not establish a reasonable

[2] We encourage parties to include in their comments specific suggestions on what, if any, explicit definition of fair market value the Department should adopt in the context of a countervailing duty proceeding.

[3] *See, e.g., Results of Redetermination Pursuant to Remand, Allegheny Ludlum Corp.* v. *United States,* CIT No. 99–09–00566 (January 4, 2002); Results of Redetermination Pursuant to Remand, *GTS Industries, S.A.* v. *United States,* CIT No. 00–03–00118 (January 4, 2002).

[4] One possible standard to apply here may be whether the government, in its capacity as seller, acted in a manner consistent with the usual sales practices of private, commercial sellers in that country.

[5] We propose below various factors that might be considered at each stage of inquiry under this new methodology. These are not meant to represent an exhaustive list of all factors that should be considered, and we invite comment on any additional factors that might be considered. Moreover, we encourage comment on any factors that might more appropriately be considered under a different stage of inquiry than the stage proposed here.

[6] The fundamental consideration here is not necessarily the number of bidders *per se* but, rather, whether the market is contestable, *i.e.*, anyone who wants to buy the company or its assets has a fair and open opportunity to do so.

[7] We would generally be concerned here only with the actions of government in its role ''as government,'' and not the actions of the government in its role as the seller to the extent its actions as seller are consistent with the normal commercial practices of a private seller.

[8] Neither the parties nor the Department would be required to quantify by how much the actual transaction price differed from an ''undistorted market'' value.

[9] We encourage comment on how this analysis might intersect with the Department's practices regarding nonmarket economies in the subsidies and countervailing duty context.

basis for believing that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action, we will find all subsidies to be extinguished and, therefore, to be non-countervailable.

We recognize that there are many important details of this proposed new methodology that require further elaboration. We encourage parties, in their comments, to provide suggestions on these details and, in particular, to address the following issues:

1. *Continuing benefit amount:* In those instances where we determine that the privatization did not result in the extinguishment of the benefits of pre-privatization subsidies, how should we quantify the amount of the benefit from those subsidies that the privatized company continues to enjoy?

2. *Concurrent subsidies:* The Department has long wrestled with the issue of subsidies given to encourage, or that are otherwise concurrent with, a privatization. Should a subsidy, *e.g.*, debt forgiveness, given to a company to encourage or facilitate a privatization be considered a ''pre-privatization'' subsidy that can be extinguished during the privatization, or a new subsidy to the new owner(s)?[10]

3. *Private sales:* Our proposed methodology only addresses government-to-private sales of all or substantially all of a company or its assets. However, changes in ownership can take a variety of forms, for instance, private-to-private transactions. In Delverde III, the Federal Circuit stated that there are significant differences between privatization and private-to-private sales and that a case involving privatization does not necessarily govern a private-to-private situation. Can a private-to-private sale extinguish pre-sale subsidy benefits?

4. *Partial or gradual sales:* What, if any, percentage of shares or assets sold should the threshold be for triggering application of this proposed methodology? How should our proposed methodology be applied in situations where assets or shares are sold incrementally over months or years?[11] What if certain incremental sales are for fair market value and others are not?

5. *Effective control:* What factors should be considered in determining whether the government has relinquished effective control over the company or assets sold? One possibility here is to apply a standard similar to the ''use or direct'' standard of our cross-ownership provision, though that standard may not be fully applicable in the case of a government-to-private sale for both theoretical and practical reasons. In analyzing any transfer of control, however, we would propose examining closely any mechanisms (*e.g.*, special or ''golden'' shares) that allow the government to retain effective (if implicit) control over the company's commercial decisions after the privatization regardless of the explicit share of the government's ownership in the property.

6. *Holding or parent companies:* Another complicated change-in-ownership variation we have encountered is the situation where the ownership changes occur at a level several times removed from the actual respondent in a particular countervailing duty case. Should application of our methodology be triggered when a partial owner of a holding company that, in turn, owns another holding company that owns the recipient, sells its shares?

Dated: March 17, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6846 Filed 3–20–03; 8:45 am]

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[10] Speaking to this issue in the Preamble to the CVD Regulations (63 FR 65348, 35355), the Department stated that

[w]hile we have not developed guidelines on how to treat this category of subsidies, we note a special concern because this class of subsidies can, in our experience, be considerable and can have a significant influence on the transaction value, particularly when a significant amount of debt is forgiven in order to make the company attractive to prospective buyers. As our thinking on changes in ownership continues to evolve we will give careful consideration to the issue of whether subsidies granted in conjunction with planned changes in ownership should be given special treatment.

[11] *See, e.g.,* Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France, 64 FR 73277 (December 29, 1999); Final Affirmative Countervailing Duty Determination: Pure Magnesium from Israel, 66 FR 49351 (September 27, 2001).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Generic Clearance of Usability Data Collections

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 20, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Phyllis Boyd, NIST, 100 Bureau Drive, Stop 3220, Gaithersburg, MD 20899–3220, telephone 301–975–4062. In addition, written comments may be sent via e-mail to *phyllis.boyd@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of data collection efforts—both quantitative and qualitative—to determine requirements and evaluate usability and utility of NIST research for measurement and standardization work. These data collection efforts may include, but may not be limited to electronic methodologies, empirical studies, video and audio data collections, interviews, and questionnaires. For example, data collection efforts will be conducted at search and rescue training exercises for rescue workers using robots. Other planned data collection efforts include evaluations of software for use by the intelligence community. Participation will be strictly voluntary. Regulated information will not be collected. The results of the data collected will be used to guide NIST research. Steps will be taken to ensure anonymity of respondents in each activity covered under this request.

II. Method of Collection

NIST will collect this information by electronic means when possible, as well as by mail, fax, telephone, and person-to-person interviews.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; State, local, or tribal government; Federal government.

Estimated Number of Respondents: 2,000.

Estimated Time Per Response: Varied, dependent upon the data collection method employed. The response time will vary from 15 minutes to fill out a questionnaire to several hours to participate in an empirical study. Average response time is expected to be 1 hour.

Estimated Total Annual Respondent Burden Hours: 2,000.

Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6775 Filed 3–20–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Manufacturing Extension Partnership (MEP) Management Information Reporting.

Form: None.

OMB Approval Number: 0693–0032.

Type of Review: Regular submission.

Burden Hours: 4,048.

Number of Respondents: 60.

Average Hours Per Response: 68 hours.

Needs and Uses: The Manufacturing Extension Partnership (MEP), sponsored by NIST, is a national network of locally-based manufacturing extension centers working with small manufacturers to help improve their productivity, improve profitability and enhance their economic competitiveness.

The collected information will provide the MEP with information regarding the centers' performance in the delivery of technology, and business solutions to US-based manufacturers. The information obtained will assist in determining the performance of the MEP Centers at both a local and national level, as well as, the impact on the national economy. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR 290, 291, 292, and H.R. 1274—Section 2).

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing to Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jacqueline Zeiher, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6776 Filed 3–20–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Fastener Quality Act Requirements

ACTION: Notice.

SUMMARY: The Department of Commerce as part of its continuing effort to reduce paperwork and respondent prudent, invites the general paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (2)(A)).

DATES: Written comments must be submitted on or before May 20, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Wayne Stiefel, International Legal Metrology Group, 301–975–4011 or via the Internet at *stiefel@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Institute of Standards and Technology (NIST), a component of the Technology Administration reporting to the Under Secretary for Technology, under the Fastener Quality Act (the Act) (Public Law 101–592 amended by Public Law 104–113, Public Law 105–234 and Public Law 106–34) is required to accept an affirmation from laboratory accreditation bodies and quality system registrar accreditation bodies. They are required to meet the applicable International Organization for Standardization/International Electro-Technical Commission (ISO/IEC) Guides (ISO/IEC Guide 58 for laboratory accreditors and ISO/IEC Guide 61 for registrar accreditors). An organization having made such an affirmation to NIST may accredit either fastener testing laboratories or quality system registrars for fastener manufacturers in accordance with the applicable provisions of the Act. NIST will solicit information declarations from U.S. and foreign, private accreditation bodies. The information collected will enable NIST to compile a list of accreditation bodies able to provide accreditations meeting all the requirements of the Act and of the procedures, 15 CFR part 280.

II. Method of Collection

Applicants submit required information in paper form.

III. Data

OMB Number: 0693–0015.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 1.5 hours per accreditation and 20 hours per petition.

Estimated Total Annual Burden Hours: 21.5.

Estimated Annual Respondent Cost Burden: $442.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–6777 Filed 3–20–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Rhode Island Coastal Resources Management Program and the Kachemak Bay National Estuarine Research Reserve, Alaska.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of States with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a State has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Rhode Island Coastal Resources Management Program evaluation site visit will be held May 19–23, 2003. One public meeting will be held during the week. The public meeting will be on Wednesday, May 21, 2003, at 7 p.m., in Conference Room B, William A. Powers Building, Department of Administration, One Capitol Hill, Providence, Rhode Island 02908.

The Kachemak Bay National Estuarine Research Reserve evaluation site visit will be held June 2–6, 2003. On public meeting will be held during the week. The public meeting will be on Wednesday, June 4, 2003, at 6 p.m., at the Kachemak Bay National Estuarine Research Reserve, Alaska Department of Fish and Game, 2181 Kachemak Drive, Homer, Alaska 99603.

Copies of states' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305, East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 118.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 14, 2003.

Alan Neuschatz,

Associate Assistant Administrator for Management, Ocean Services and Coastal Zone Management.

[FR Doc. 03–6778 Filed 3–20–03; 8:45 am]

BILLING CODE 3510–08–M

COMMODITY FUTURES TRADING COMMISSION

In the Matter of Washington Mutual, Inc. and Its Various Subsidiaries Request for Relief

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: In response to a request for relief from Washington Mutual, Inc. and its various subsidiaries (collectively, ''Washington Mutual''), the Commodity Futures Trading Commission (''Commission''), pursuant to section 1a(12)(C) of the Commodity Exchange Act (''Act''), is issuing an order that provides that, subject to certain conditions, Single Asset Development Borrowers (''SADBs'') that have a natural person, who is an eligible contract participant (''ECP''), acting as a guarantor for the SADBs'' over-the-counter (''OTC'') derivatives transactions, are ''eligible contract participants'' as that term is defined in section 1a(12) of the Act. Accordingly, subject to certain conditions as set forth in the Commission's order, an SADB acting for its own account, whose obligations are guaranteed by a natural person who is an ECP, is permitted to enter into certain OTC derivatives transactions pursuant to section 2(c), 2(d)(1) and 2(g) of the Act.

DATES: This order is effective March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director or Peter B. Sanchez, Attorney Advisor, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5439 and 202–418–5236, respectively. E-mail: *lpatent@cftc.gov and psanchez@cftc.gov, respectively.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 1a(12) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (''CFMA''), Pub. L. 106–554, which was signed into law on December 21, 2000, defines the term ECP by listing those entities and individuals considered to be ECPs.[1] Natural persons who meet certain financial criteria are explicitly included in the ECP definition to the extent that such persons transact in their individual capacity. The section 1(a)(12) definition of ECP also includes certain entities whose obligations are guaranteed by an ECP. Natural persons are not among the permissible guarantors enumerated in section 1a(12).[2]

In addition to specifying certain persons as ECPs, the Act gives the Commission discretion to expand the ECP category. Specifically, section 1a(12)(C) provides that the list of entities defined as ECPs shall include ''any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.'' Although the Washington Mutual letter was framed as a request for a no-action letter, the Commission has determined, pursuant to section 1a(12)(C) of the Act, to issue an order, subject to conditions, that certain entities that have a natural person ECP as a guarantor are ECPs.

II. The Washington Mutual Letter

A. Introduction

By letter to the Division of Clearing and Intermediary Oversight (''Division''), Washington Mutual submitted a request for a no-action letter pursuant to Commission rule 140.99.[3] Specifically, Washington Mutual, acting on behalf of itself and unnamed SADBs who wish to enter into OTC transactions with Washington Mutual, requested a no-action letter pursuant to rule 140.99 stating that the Division would not recommend enforcement action if SADBs, when guaranteed by a natural person who is an ECP, entered into certain OTC transactions.

SADBs are entities that develop a single piece of commercial real estate. Because SADB clients typically borrow amounts nearly equal to the value of the real estate to be developed, they usually have a low net worth (less than $1 million). Washington Mutual acts as a lender to several SADBs.

Washington Mutual wishes to engage in OTC derivatives transactions with these SADBs in order to allow the SADBs to hedge their operating risks from interest rates, or foreign currencies, but the SADBs do not qualify as ECPs because they do not possess $10 million in total assets or $1 million in net worth as required by section 1a(12)(A)(v) of the CEA. Natural persons who are ECPs with over $10 million in assets are willing to act as guarantors of SADBs for the OTC transactions, but absent a finding that the ECP definition should be expanded to include entities with natural-person ECPs as guarantors, an SADB with a natural-person ECP as a guarantor will not qualify as an ECP. This presents a matter of first impression for the Commission.

Washington Mutual represents that the permissible OTC transactions would be limited to trading in OTC derivatives that are necessary for the SADB to hedge the risk that the SADB is exposed to, or reasonably likely to be exposed to, as a result of the SADB's operations. The trading in the OTC derivatives will be limited to transactions that constitute hedging transactions.

Washington Mutual further proposed that such transactions would be subject to additional conditions and restrictions detailed in the petition and described below.

B. Public Interest Considerations

In its letter, Washington Mutual stated that it is good public policy for the Commission to permit SADBs to have natural persons acting as guarantors.

First, Washington Mutual stated that failure to grant the requested relief would limit the opportunity of SADBs to manage their business risk.

Second, Washington Mutual stated that failure to grant the requested relief would yield the unusual result that the guarantor, as an individual, would be permitted to enter into derivative transactions, but that an entity which is fully guaranteed by the same individual may not.

Moreover, a natural person could form a single shareholder corporation or single member limited liability company and be eligible to engage in the same kind of contracts directly, as an ECP, or indirectly as a guarantor. Forming a corporation or LLC that qualifies as an ECP, however, would tie up a great deal of the natural person's assets.

Third, the CEA permits commodity pools with assets of over $5 million that are operated by commodity pool operators (''CPOs'') subject to regulation under the Act (or a similarly situated foreign person) to act as guarantors. Conceivably, a collection of several investors, each of whom need not have enough assets to qualify as an ECP, could form a commodity pool and invest in the same type of derivatives directly, acting as an ECP, or indirectly as a guarantor.

Because the bank and an individual can engage in derivative transactions among themselves, permiting the individual to guarantee a third party for the same type of transaction should not be objectionable—particularly if the derivatives transactions are limited solely to hedging transactions.

III. Conclusion

After consideration of the Washington Mutual letter, the Commission has determined that SADBs, subject to

[1] Included generally in section 1a(12) as ECPs are financial institutions; insurance companies and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; governmental entities; brokers, dealers, and futures commission merchants (''FCMs'') subject to regulation and organized as other than natural persons or proprietorships; brokers, dealers, and FCMs subject to regulation and organized as natural persons or proprietorships subject to total asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; floor brokers or floor traders subject to regulation in connection with transactions that take place on or through the facilities of a registered entity or an exempt board of trade; individuals subject to total asset requirements; an investment adviser or commodity trading advisor acting as an investment manager or fiduciary for another ECP, and any other person that the Commission deems eligible in light of the financial or other qualifications of the person.

[2] Non-natural persons are permitted to act as guarantors for an entity that would not otherwise be an ECP. Section 1a(12)(A)(v) defines an ECP as, among other things, a ''corporation, partnership, proprietorship, organization, trust, or other entity'' that (1) has a net worth exceeding $1 million and that enters into agreements, contracts or transactions in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability that is owned or incurred; or (2) that has total assets exceeding $10 million, the obligations of which are guaranteed or otherwise supported by an entity described in 1(a)(12)(A)(i) (financial institutions), (ii) (certain insurance companies), (iii) (certain investment companies), (iv) (certain commodity pools), or (vii) (government entities).

[3] The request was presented by a letter dated October 22, 2002, to the Director of Division of Trading and Markets from Jacob Scholl, counsel for Washington Mutual. As of July 1, 2002, a reorganization of the Commission became effective. The Division of Clearing and Intermediary Oversight is the successor to the Division of Trading and Markets.

certain conditions, are eligible to be ECPs as that term is defined in section 1a(12) of the Act. Under the terms of this order, the SADBs would meet the financial qualifications of an ECP by having a financial guarantee for the OTC transactions from a natural person who is an ECP and by satisfying certain minimum financial requirements.

Accordingly, the Commission has determined to issue an order, pursuant to section 1a(12)(C) of the Act, subject to certain conditions, that SADBs as described herein with a natural person who is an ECP acting as guarantor qualify as ECPs. The order permits the SADBs to enter into OTC transactions pursuant to section 2(c), 2(d)(1) and 2(g) of the Act.

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The order is intended to reduce regulatory barriers to permit SADBs, when acting in a proprietary capacity, with a natural person who is an ECP as guarantor, to enter into OTC transactions for hedging purposes. The Commission has considered the costs and benefits of the order in light of the specific provisions of section 15(a) of the Act.

A. Protection of Market Participants and the Public

The order would permit an SADB to participate in the OTC markets, subject to a guarantee from a natural person who qualifies as an ECP. Accordingly, there should be no effect on the Commission's ability to protect market participants and the public.

B. Efficiency and Competition

The order is not expected to have an effect on efficiency or competition.

C. Financial Integrity of Futures Markets and Price Discovery

The order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of the futures and options markets.

D. Sound Risk Management Practices

The order should have no effect, from the standpoint of imposing costs, on the risk management practices of the OTC derivatives, futures or options industry.

E. Other Public Interest Considerations

The order will have the positive effect of allowing SADBs to hedge the risks that they may be exposed to as a result of their business operations.

V. Order

Upon due consideration, and pursuant to its authority under section 1a(12)(C) of the Act to determine that persons other than those enumerated in the Act are ECPs in light of the financial or other qualifications of these persons, the Commission hereby determines that an SADB, whose OTC derivatives obligations are guaranteed by a natural person who is an ECP, is an eligible contract participant and may enter into OTC derivatives contracts, agreements or transactions under the following conditions:

1. The contracts, agreements or transactions must be entered into pursuant to section 2(c), 2(d)(1) or 2(g) of the Act.

2. Washington Mutual must verify that each natural-person ECP guarantor to an SADB meets the financial requirements to be an ECP as a natural person, pursuant to section 1a(12)(A)(xi)(I).

3. The SADB must have obtained a financial guarantee for the contracts, agreements or transactions from a natural person that meets the qualifications to be an ECP as such term is currently defined in section 1(a)(12)(A)(xi)(I) of the Act and as may be amended from time to time.

4. An SADB may engage in OTC derivatives contracts, agreements or transactions only to the extent that such OTC derivatives contracts, agreements or transactions are necessary to hedge the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by an SADB in the conduct of its business.

5. SADBs may only engage in OTC derivatives trades with Washington Mutual if they have an existing lending relationship with Washington Mutual and they act in a principal capacity with Washington Mutual.

6. A guarantor must compute its net worth and total assets in accordance with generally accepted accounting principles consistently applied.

7. Natural persons acting as guarantors must unconditionally guarantee the full amount of an SADB's OTC derivatives contracts, agreements or transactions.

8. Washington Mutual will keep records relating to its OTC derivative contracts, agreements and transactions with SADBs and their guarantors under this Order, including documentation demonstrating compliance with conditions 2, 3, 4, 5 and 7 of this order, the levels of OTC trading and the number of SADBs and guarantors who participated in these activities. Such records shall be made available upon the request of any representative of the Commission, the Department of Justice, Washington Mutual's banking regulators or any other governmental entity with jurisdiction over Washington Mutual or the OTC derivatives transactions in question.

This Order is based upon the representations made and supporting material provided to the Commission by Washington Mutual. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the provisions set forth herein are appropriate. Further, if experience demonstrates that the continued effectiveness of this Order would be contrary to the public interest, the Commission may condition, modify, suspend, terminate or otherwise restrict the provisions of this Order, as appropriate, on its own motion. This Order pertains only to OTC derivative transactions that are not contrary to banking laws and regulations that may otherwise govern Washington Mutual's conduct.

Issued in Washington, DC, on March 17, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–6774 Filed 3–20–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces a proposed information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 20, 2003.

ADDRESSES: Written comments and recommendations on the continuing information collection should be sent to the TRICARE Management Activity, Operations Directorate, Attn: Danita Hunter, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection, please write to the above address or contact Danita Hunter by calling (703) 681–0039 or e-mail at *danita.hunter@tma.osd.mil.*

Title, Associated Form and OMB Number: Women, Infant, and Children Overseas Program (WIC Overseas) Eligibility Application.

Needs and Uses: The proposed information collection requirement is necessary for individuals to apply for certification and periodic recertification to receive WIC Overseas benefits.

Affected Public: Individuals.

Annual Burden Hours: 187.5.

Number of Respondents: 375.

Responses Per Respondent: 2.

Average Burden Per Response: 15 minutes.

Frequency: Initially and every six months.

SUPPLEMENTARY INFORMATION:

Summary of Collection

The purpose of the program is to provide supplemental foods and nutrition education to serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other substance abuse, and to improve the health status of program participants. The benefit is similar to the benefit provided under the domestic WIC program.

Summary of Information Collection

Respondents are individuals on duty at stations outside the United States (and its territories and possessions) accompanying the armed forces who desire to receive supplemental food and nutrition education services. To be eligible for the DoD special supplemental food program, these persons applying must additionally be found to be at nutritional risk. Specifically, to be certified as eligible to receive benefits under the program, a person must:

- Meet specified program income guidelines published by the Secretary of Health and Human Services, and
- Meet one of the criteria listed determined to be indicative of nutritional risk.

Determinations of income eligibility and nutritional risk will be made to the extent practicable using applicable standards used by the United States Department of Agriculture (USDA) in determining eligibility for the domestic Women, Infants, and Children (WIC) program. In determining income eligibility, the Department will use the Department of Health and Human Services income poverty table for the state of Alaska.

Dated: February 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–6765 Filed 3–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Missile Defense, Phase III (Modeling and Simulation) will meet in closed session on March 18, 2003, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA; April 9, 2003, in Huntsville, AL; April 18, 2003, at Shriever AFB, CO; and May 1–2, 2003, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. The Task Force will assess: the scope of the modeling and simulation effort; the appropriateness of the level of fidelity of classes of simulations; the impact of communications in the end-to-end models; the approaches to ensuring the validity of simulations for all uses, including exercises and wargaming done for training and operations concept development; and additional opportunities for modeling and simulation contribution to Ballistic Missile Defense Systems development and evaluation.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address the above mentioned issues in a system of systems context with particular emphasis on battle management systems, command and control systems, and the global sensor system. The Task Force will provide advice on the state of modeling and simulation for use in assessing overall performance of segments of the Ballistic Missile Defense Systems; *e.g.,* ground-based midcourse intercept system, space-based interceptor system.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: February 24, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–6762 Filed 3–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Interference Capability will meet in closed session on April 2, 2003, in Washington, DC (place to be determined). This Task Force will review: new interference capabilities, identifying potentially high-payoff and high-threat capabilities, existing data, assessing technical merits; and potential threats to U.S. assets.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information on high-payoff and high-threat capabilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–462, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: February 24, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–6763 Filed 3–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Seabasing will meet in closed session on April 15–16, 2003, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess how seabasing of expeditionary forces can best serve the nation's defense needs through at least the first half of the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will examine the broadest range of alternatives for seabasing of expeditionary forces and be guided by: the expected naval environmental for the next 20–50 years; the role of naval forces in enabling access for joint forces through the world's littorals; assets and technolgoies needed to establish a robust and capable Enhanced Networked Seabase; the timing of the acquisition of the technologies, platforms and systems which replace the legacy systems; and the function of new hardware and opportunities to reallocate functionally to improve effectiveness, or efficiency, or economy.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: February 24, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–6764 Filed 3–20–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability for the Draft Feasibility Report and Enviornmental Impact Statement/Environmental Impact Report for the Lower Cache Creek, Yolo County, CA, City of Woodland and Vicinity, for Potential Flood Damage Reduction Project

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, in coordination with The Reclamation Board of the State of California and the City of Woodland, have prepared a Draft Feasibility Report and Environmental Impact Statement/ Environmental Impact Report (DFR/ DEIS–EIR) for the Lower Cache Creek, Yolo County, CA, City of Woodland and Vicinity, for Potential Flood Damage Reduction Project. This investigation proposes to reduce flood damage to the city of Woodland and vicinity. The DFR/DEIS–EIR is being made available for a 45-day public comment period. All comments should be submitted on or before May 5, 2003.

FOR FURTHER INFORMATION CONTACT: To obtain additional information related to this Report, interested persons are invited to contact the following: Ms. Patti Johnson, Environmental Manager, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, (916) 557–6611 or fax (916) 557–5138, *patti.p.Johnson@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Report Availability.* Printed copies of the DFR/DEIS–EIR are available for public inspection and review at the following locations:

a. U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814–2922.

b. City of Woodland Library, Reference Section, 250 First Street, Woodland, CA 95695.

c. Yolo County Library, Yolo Branch, 37750 Sacramento Street, Yolo, CA 95697.

The entire DFR/DEIS–EIR may also be viewed on the U.S. Army Corps of Engineers, Sacramento District website at the following address: *http://spk.usace.army.mil/civ/lowercachecreek/*

2. *Commenting.* Comments received in response to this report, including names and addresses of those who comment, will be considered part of the public record on this proposed action. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the commenters may be resubmitted with or without the name and address.

Dated: March 3, 2003.

Michael J. Conrad, Jr.,

COL, EN, Commanding.

[FR Doc. 03–6701 Filed 3–20–03; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy. U.S. Patent Number 6,423,844 B1 entitled ''Process for Making 1,2,4-triazolo[4,3-A][1,3,5]triazine-3,5,7-triamine.''

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Surface Warfare Center, Indian Head Division, Code 05T, 01 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: March 11, 2003.

Robert E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–6831 Filed 3–20–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy. U.S. Patent Number 6,379,104 entitled ''Single Side Entry Container Lifting Device.''

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Surface Warfare Center, Indian Head Division, Code 05T, 01 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: March 11, 2003.

Robert E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–6832 Filed 3–20–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy. U.S. Patent Number 6,502,696 entitled ''Strapless Pallet.''

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Surface Warfare Center, Indian Head Division, Code 05T, 01 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: March 11, 2003.

Robert E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–6833 Filed 3–20–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[Docket No. EA–225–A]

Application To Export Electric Energy; Split Rock Energy LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Split Rock Energy, LLC (Split Rock) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 21, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 15, 2000, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–225 authorizing Split Rock to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company (formally The Detroit Edison Company), Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. That two-year authorization expired on August 15, 2002.

On February 3, 2003, DOE received an application from Split Rock to renew its authorization to transmit electric energy from the United States to Canada for a period of five (5) years.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Split Rock application to export electric energy to Canada should be clearly marked with Docket EA–225-A. Additional copies are to be filed directly with Steven W. Tyacke, Esq., 30 West Superior Street, Duluth, MN 55802, (218) 723–3955.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been

granted in FE Order No. EA–225. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–225 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the FE home page at *http://www.fe.de.gov.* Upon reaching the FE home page, select ''Electricity Regulation'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on March 17, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–6787 Filed 3–20–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–85–2]

Application To Transfer Presidential Permit; Westmin Resources, Inc. and Boliden Westmin (Canada) Limited

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Westmin Resources, Inc. (WRI) and Boliden Westmin (Canada) Limited (BWCL) jointly applied to transfer Presidential Permit PP–85–A from WRI to BWCL.

DATES: Comments, protests, or requests to intervene must be submitted on or before April 7, 2003.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export, FE–27, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) at 202–586–7983 or Michael T. Skinker (Program Attorney) at 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

Existing Presidential permits are not transferable or assignable. However, in the event of a proposed voluntary transfer of facilities, in accordance with the regulations at 10 CFR 205.323, the existing permit holder and the transferee are required to file a joint application for transfer of the permit that includes a statement of reasons for the transfer.

On October 5, 1988, DOE issued Presidential Permit PP–85 to WRI for a 35,000-volt alternating current transmission line which crosses the U.S. international border from British Columbia, Canada, passes through the State of Alaska, and re-enters British Columbia at a second point on the U.S. international border. On November 13, 1989, at the request of WRI, DOE reissued the Presidential permit (PP–85–A) in the name of Westmin Mines, Inc.

On October 22, 2002, WRI and BWCL jointly filed an application to transfer Presidential Permit PP–85–A from WRI [1] to BWCL. BWCL is a Canadian corporation and an indirect, wholly-owned subsidiary of Boliden Mineral AB, a Swedish corporation. BWCL, will own and operate the U.S. portion of the transmission facilities.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: W.S. Garton AND James Lemoine, Bull, Housser & Tupper, 3000—1055 West George Street, Vancouver, B.C., V6E 3R3, Canada.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy home page at: *http://www.fe.doe.gov.* Upon reaching the Fossil Energy home page, select ''Electricity Regulation'' from the options menu, and then ''Pending Proceedings.''

Issued in Washington, DC, on March 17, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Systems, Office of Coal & Power Import/Export, Office of Fossil Energy.

[FR Doc. 03–6788 Filed 3–20–03; 8:45 am]

BILLING CODE 6450–01–P

[1] In the application for transfer of Presidential Permit PP–85–A, the applicants submitted information indicating that on June 14, 1993, Westmin Mines, Inc. changed its name to Westmin Resources, Inc.

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0011, FRL–7470–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Investigations Into Possible Noncompliance of Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3051 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Investigations into Possible Noncompliance of Motor Vehicles, EPA ICR Number 0222.06, OMB 2060–0086, expires 31 August 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 20, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Richard W. Nash, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood Dr, Ann Arbor MI 48105, (734) 214–4412, *nash.dick@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR

under Docket ID number OAR–2003–0011, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to a-and-r-*docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are owners of motor vehicles.

Title: Investigations into Possible Noncompliance of Motor Vehicles. (OMB Control Number 2060–0086; EPA ICR Number 0222.06, expiring 31 August 2003.)

Abstract: As part of an integrated compliance program, EPA occasionally needs to evaluate the emission performance of in-use motor vehicles. In order to perform this function, EPA must solicit certain information from the vehicles owner/lessee. Participation in the information survey, as well as the vehicle evaluation, is strictly voluntary. Typically, a group of 25 potential participants is identified. They are asked to return a postcard indicating their willingness to participate and if so, to verify some limited vehicle information. They are also asked when it would be suitable to contact them. Those willing to participate are called and asked about a half dozen questions concerning vehicle condition, operation and maintenance. Depending on owner/lessee response, additional groups of potential participants may be contacted until a sufficient number of vehicles has been obtained.

Information collected is used to assure that vehicles procured meet certain criteria. For example, since a manufacturer's responsibility to recall passenger cars is limited to 10 years of age or 100,000 miles of use, vehicles tested to establish potential recall liability must also meet those criteria. Other testing programs and vehicle types have different criteria. All information is publicly available.

The previous description generally describes how EPA obtains information on in-use passenger cars and light trucks from individual owners and lessees. Heavy duty trucks, those commonly referred to as over ''¾ ton'' capacity, are usually employed commercially; typically they are part of a ''fleet'' of identical (or very similar) vehicles. Consequently, EPA employs a slightly different method to obtain them. Potential owners/lessees can be found in registrations lists; engine manufacturers will also supply identities of their customers. Occasionally, a fleet operator will contact EPA and volunteer to participate. Once potential sources are identified, EPA will make brief telephone calls to the fleet managers to ascertain if they wish to participate. If the response is positive, EPA will visit the fleet to inspect vehicles and review maintenance records. (Fleets typically keep very good records on each vehicle; EPA can quickly determine if a particular unit is acceptable.) A single fleet can supply multiple vehicles and, typically, is quite willing to participate. Therefore, EPA makes far fewer inquiries than with individual owners of light vehicles. Based on comments, EPA may decide to address light and heavy duty vehicles separately.

EPA uses several techniques in selecting the class or category of motor vehicles to be evaluated. First, if based on other information (*e.g.,* defect reports, service bulletins) there is a suspicion that a problem exists; EPA may target a particular group. Second, groups with a large number of vehicles have potential for significant air quality effects; they may be selected for that reason. New emission control technology without a proven history is another factor in making selections. Finally, some vehicle classes are selected on a random basis.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: EPA estimates that approximately 1800 vehicle owners will be contacted, on average they will spend approximately 20 minutes each responding for a total burden of approximately 600 hours. The average reflects those who decline to participate (who will spend a short time reading the solicitation letter and discard it) as well as those who participate and will be asked a few additional questions about vehicle condition, operation and maintenance. This collection is entirely voluntary, there are no recordkeeping requirements. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide

information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 14, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–6813 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7471–1]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or email at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 2057.01; Eliciting Risk Tradeoffs for Valuing Fatal Cancer Risks; was approved 02/13/2003; OMB Number 2060–0502; expires 02/28/2006.

EPA ICR No. 1230.11; Prevention of Significant Deterioration Non-Attainment Area New Source Review (Final Rule for PSD and NSR Applicability); was approved 02/28/2003; in 40 CFR 51.160 to 51.166, 52.21, 52.24; OMB Number 2060–0003; expires 10/31/2004.

Comment Filed

EPA ICR No. 2045.01; National Emission Standards for Hazardous Air Pollutants for Automobile and Light-duty Trucks Surface Coating (Proposed Rule); on 02/13/2003 OMB filed a comment.

Dated: March 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–6814 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6638–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed March 10, 2003, through March 14, 2003, pursuant to 40 CFR 1506.9.

EIS No. 030097, FINAL EIS, BLM, OR, Kelsey Whisky Landscape Management Planning Area, Implementation, Associated Medford District Resource Management Plan Amendments, Josephine and Jackson Counties, OR, Wait Period Ends: April 21, 2003, Contact: Sherwood Tubman (541) 618–2399. This document is available on the Internet at: *http://www.or.blm.gov/Medford.*

EIS No. 030098, DRAFT EIS, AFS, CO, Missionary Ridge Burned Area Timber Salvage Project, Timber Harvesting, San Juan National Forest north of Durango, LaPlata County, CO, Comment Period Ends: May 5, 2003, Contact: David Dallison (970) 385–1253.

EIS No. 030099, DRAFT EIS, JUS, TX, Rio Grande Operation Project, Proposal to Reduce or Eliminate Illegal Drug Activity, and Illegal Immigrant, Starr, Hidalgo, Cameron Counties, TX, Comment Period Ends: May 5, 2003, Contact: Terry Roberts (409) 766–3035.

EIS No. 030100, FINAL EIS, FHW, AL, Memphis to Atlanta Corridor Study (DPS–A002(002), Proposal to Build Highway from the Mississippi/Alabama State Line to Interstate 65, Funding and COE Section 404 Permit, Colbert, Franklin, Lauderdale, Lawrence, Limestone and Morgan Counties, AL, Wait Period Ends: April 21, 2003, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 030101, FINAL EIS, NPS, AZ, Sunset Crater Volcano National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ, Wait Period Ends: April 21, 2003, Contact: Sam Henderson (520) 526–1157.

EIS No. 030102, FINAL EIS, NPS, AZ, Wupatki National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ, Wait Period Ends: April 21, 2003, Contact: Sam Henderson (520) 526–1157.

EIS No. 030103, DRAFT EIS, BLM, CA, Santa Rosa and San Jacinto Mountains National Monument Management Plan, Implementation, Managing Public Lands, Riverside County, CA, Comment Period Ends: June 19, 2003, Contact: Connell Dunning (760) 251–4817. This document is available on the Internet at: *http://www.ca.blm.gov/palmsprings/santa_rosa_national_ monument.htm1.*

EIS No. 030104, DRAFT EIS, AFS, TN, Cherokee National Forest Revised Land and Resource Management Plan, Implementation, Carter, Cocke, Greene, Johnson, McMinn, Monroe, Polk, Sullivan and Unicoil, TN, Comment Period Ends: June 16, 2003, Contact: Terry McDonald (423) 476–9700. This document is available on the Internet at: *http://www.southernregion. fs.fed.us/cherokee/planning/revisions.htm.*

EIS No. 030105, DRAFT EIS, NPS, PA, Schuylkill River Valley National Heritage Area Management Plan Update, Living with the River, Proposal to Conserve, Interpret and Develop the Historical, Cultural, Natural and Recreational Resources, Schuylkill, Berks, Chester, Montgomery and Philadelphia Counties, PA, Comment Period Ends: May 5, 2003, Contact: Peter Samuel (215) 597–1848.

EIS No. 030106, DRAFT EIS, AFS, VA, KY, WV, Jefferson National Forest Revised Land and Resource Management Plan, Implementation, Mount Rogers National Recreation Area, Clinch, Glenwood, New Castle, and New River Valley Rangers Districts, VA, WV and KY, Comment Period Ends: June 19, 2003, Contact: Nancy Ross (540) 265–5172.

EIS No. 030107, FINAL EIS, AFS, MT, Bitterroot National Forest Noxious Weed Treatment Project, Ground and Aerial Herbicides Application, Mechanical, Biological and Cultural Weed Treatment and Public Awareness Measures, Implementation, Stevensville Ranger

District, Bitterroot National Forest, Ravalli County, MT, Wait Period Ends: April 21, 2003, Contact: Don Stadler (406) 777–5461. This document is available on the Internet at: *http://www.fs.fed.us/r1/ bitterroot/ planning/ decisiondocs/ decisiondocs.htm1.*

EIS No. 030108, FINAL EIS, GSA, WI, Badger Army Ammunition Plant, Property Disposal, Implementation, Townships of Sumpter and Merrimac, Sauk County, WI, Wait Period Ends: April 21, 2003, Contact: Mark N. Lundgren (312) 353–0302.

EIS No. 030109, DRAFT SUPPLEMENT, AFS, ID, Middle Fork Weiser River Watershed Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, Council Ranger District, Adams County, ID, Comment Period Ends: May 5, 2003, Contact: Curt Spalding (208) 634–0796.

EIS No. 030110, DRAFT SUPPLEMENT, AFS, ID, Sloan-Kennally Timber Sale Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, McCall Ranger District, Adams County, ID, Comment Period Ends: May 5, 2003, Contact: Curt Spalding (208) 634–0796.

EIS No. 030111, DRAFT SUPPLEMENT, AFS, ID, Little Weiser Landscape Vegetation Management Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, Adams County, ID, Comment Period Ends: May 5, 2003, Contact: Curt Spalding (208) 634–0796.

EIS No. 030112, DRAFT SUPPLEMENT, AFS, ID, Goose Creek Watershed Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, New Meadows Ranger District, Adams County, ID, Comment Period Ends: May 5, 2003, Contact: Curt Spalding (208) 634–0796.

EIS No. 030113, DRAFT SUPPLEMENT, AFS, ID, Brown Creek Timber Sale Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, New Meadow Ranger District, Adams County, ID, Comment Period Ends: May 5, 2003, Contact: Curt Spalding (208) 634–0796.

EIS No. 030114, DRAFT EIS, NPS, AK, Glacier Bay National Park and Preserve Vessel Quotas and Operating Requirements for Cruise Ships and Tour, Charter, and Private Vessels, Implementation, AK, Comment Period Ends: May 20, 2003, Contact: Nancy Swanton (907) 257–2651. This document is available on the Internet at: *http://www.nps.gov/glba.*

EIS No. 030115, FINAL EIS, FRC, CA, Pit 3, 4, 5 Hydroelectric Project, (FERC No. 233–081), Application for New License, Pit River, Shasta-Trinity National Forest, Shasta County, CA, Wait Period Ends: May 5, 2003, Contact: John Mudre (202) 502–8902.

EIS No. 030116, DRAFT EIS, COE, CA, Lower Cache Creek Flood Damage Reduction Project, Implementation, City of Woodland and Vicinity, Yolo County, CA, Comment Period Ends: May 5, 2003, Contact: Karen Enstrom (916) 574–0372.

EIS No. 030117, FINAL EIS, NRS, MO, Little Otter Creek Watershed Plan, Installation of One Multi-Purpose Reservoir and Development of Basic Facilities for Recreational Use, Implementation, Caldwell County, MO, Wait Period Ends: April 21, 2003, Contact: Roger Hansen (573) 876–0901.

EIS No. 030118, DRAFT EIS, FTA, CO, West Corridor Project, Transportation Improvements in the Cities of Denver, Lakewood and Golden, Light Rail Transit (LRT), Jefferson County, CO, Comment Period Ends: May 5, 2003, Contact: David Hollis (303) 638–9000.

Amended Notices

EIS No. 030015, DRAFT EIS, BLM, AK, Northwest National Petroleum Reserve-Alaska (NPR-A) Integrated Plan, Multiple-Use Management of 8.8 million Acres, Lands within the North Slope Borough, AK, Comment Period Ends: April 2, 2003, Contact: Curtis Wilson (907) 271–5546. Revision of FR Notice Published on 1/17/2003: CEQ Comment Period Ending 3/18/ 2003 has been Extended to 4/2/2003.

EIS No. 030089, FINAL EIS, COE, TX, North Padre Island Storm Damage Reduction and Environmental Restoration Project, Construction of a Channel between the Laquna Madre and the Gulf of Mexico across North Padre Island referred to as Packery Channel Project, Nueces County, TX, Wait Period Ends: April 14, 2003, Contact: Carolyn Murphy (409) 766–3044. Revision of FR Notice Published on 3/14/2003: Correction to the State from IL to TX.

Dated: March 18, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–6803 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0071; FRL–7294–4]

Request for Proposals for Pollution Prevention Information Network FY 2003; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pollution Prevention and Toxics expects to have approximately $1 million available in fiscal year 2003, subject to the availability of funds at the time of the award, to fund grant proposals supporting a nationwide network of pollution prevention information providers. The Pollution Prevention Act of 1990 provides for funding to States to strengthen the efficiency and effectiveness of State technical assistance programs in providing source reduction information to businesses. The Pollution Prevention Information Network grants seek to coordinate work among technical assistance providers to minimize duplication of effort and improve information collection, synthesis and dissemination, and training for the promotion of pollution prevention techniques. These funds will be targeted for regional applicants that are willing to work as part of a collective nationwide service. Grantees will make their information available electronically, publically report use of their services, and utilize State and local representatives to guide and evaluate their services. Cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990. Substantial involvement by EPA in the cooperative agreement may include: The EPA project officer participating in monthly conference calls, consulting on the agenda for regional meetings, or attending steering committee meetings, etc.

DATES: All grant proposals must be received on or before May 20, 2003.

ADDRESSES: Proposals may be submitted electronically, by mail or through hand delivery/courier. Please follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Beth Anderson, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, telephone number: (202) 564–8833; fax number: (202) 564–8899; e-mail address: Anderson.Beth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory of or possession of the United States, any agency or instrumentality of a State including State universities, and Indian tribes and intertribal consortia. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0071. The official public docket consists of the documents specifically referenced in this action. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. This document will also be available at the EPA P2 web site http://www.epa.gov/p2.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and To Whom Do I Submit a Proposal?

You may submit a proposal by mail, electronically or by courier.

1. *Electronically*. By e–mail to: Anderson.Beth@epa.gov. If you submit an electronic proposal, include your name, mailing address, an e–mail address and telephone number. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the proposal and allows EPA to contact you in case EPA cannot read your proposal due to technical difficulties or needs further information.

2. *By mail*. Send your proposal to: Beth Anderson, Office of Pollution Prevention and Toxics, Mail Code 7409M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your proposal to: Beth Anderson, Environmental Protection Agency–East, Room 5213, 1201 Constitution Ave., NW., Washington, DC 20004.

II. Description of the Pollution Prevention Information Network Grant Program

1. *Purpose*. Prior to this EPA grant program, there were few mechanisms to coordinate development, review, and dissemination of pollution prevention (P2) information among Federal, State, and local agencies involved in promoting source reduction technologies. Access to P2 information and assistance varied across the United States. Even now, not all programs providing assistance to small businesses have access to P2 information that may be useful and relevant to their clientele. EPA believes that investing in coordinating and standardizing P2 information collection and synthesis will benefit State P2 technical assistance providers, EPA supported compliance assistance centers (more information at http://www.assistancecenters.net), and other Federal programs such as: Small Business Development Centers and the National Institute of Standards and Technology Manufacturing Extension Partnerships. EPA is seeking to provide more efficient support to P2 technical assistance providers by supporting regional centers that have specialized areas of information they collect and disseminate. Regional centers can be more responsive to the information needs of their States and allow States to focus resources on their unique issues. EPA believes that some of the benefits of a coordinated P2 information network are:

i. Improved access to P2 information for all State and Federal business assistance programs.

ii. Improved coordination in the creation of P2 outreach materials allows States to use or revise existing P2 information.

iii. Increased number of partnerships among P2 clients and the regional P2 information center, increased information sharing and P2 services.

2. *Program history*. EPA awarded nine grants in response to the first **Federal Register** Notice on the establishment of a Pollution Prevention Information Network published on February 5, 1997 (62 FR 5393) (FRL–5582–5). The 9 grantees represented all 10 of the EPA Regions. These regional P2 information centers were usually only partially funded by this grant program and represent a variety of organizations. Some of the grantees were also funded by other Federal technical assistance programs, such as the Small Business Administration, the National Institute of Standards and Technology Manufacturing Extension Partnership, State and local governments, or their Regional EPA office. The first solicitation for this grant program was intended to establish new regional centers (where needed) or give additional funds to existing centers to:

i. Improve communication among centers.

ii. Minimize duplication of efforts in creating and disseminating P2 information.

iii. Promote information standards that would facilitate P2 information dissemination nationwide.

Over the first 2 years of the grant program (1998 and 1999), grantees enhanced networking among centers and improved nationwide interaction on P2 information projects through monthly conference calls, biannual meetings, websites, listserves and data bases. Frequent communication built familiarity with other regional resources and their mode of operation. The grantees formed a group called the ''Pollution Prevention Resource Exchange'' (P2Rx). More information about the P2Rx centers can be found on the Internet at: http://www.p2rx.org. For more detail on the projects the group is working on, go to this link http://www.p2rx.org/AdminInfo/toc.cfm and click on ''Action Plans–By Project'' in the left hand column.

After the second **Federal Register** Notice was published on November 12, 1999 (64 FR 61637) (FRL–6391–3), announcing the availability of funds for regional center proposals, eight regional

centers were funded. All of the FY 2000 grantees had been previously funded under the first solicitation, so there was continuity in the collaborative efforts between the centers, as well as continuity in support from the State and local governments being served by the centers.

One of the regional centers serves as ''P2Rx program coordinator'' with a 2–year term of service. The P2Rx program coordinator receives additional funding for tasks such as: Facilitating frequent communication among regional centers, developing consensus among the centers, coordinating subcommittees and the development of standards, and providing meeting and training services for center staff. New grantees will be included in P2Rx national meetings, monthly conference calls, subcommittees, trainings, and other activities supporting the national products this group agrees to develop.

3. *Authorizing statute*. This solicitation is made under the Pollution Prevention Act of 1990, (the Act) (Public Law 101–508) which established as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

i. Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

ii. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines P2 as the use of other practices that reduce or eliminate the creation of pollutants through: Increased efficiency in the use of raw materials, energy, water or other resources, protection of natural resources, or protection of natural resources by conservation. Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State program will:

i. Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

ii. Target assistance to businesses for whom lack of information is an impediment to source reduction.

iii. Provide training in source reduction techniques.

III. Award Information

1. *Availability of FY 2003 funds*. With this publication, EPA is expecting the availability of $1 million in cooperative agreement funds for FY 2003. All funds are subject to availability at the time of award. These awards will be made through a competitive process for amounts not to exceed $150,000.00 per year. Proposals may include up to 3 years in their schedule and budget. Funding for multiple year proposals will be made incrementally, every year as funds are available. In the past 5 years the awards have averaged $121,000.00. Cooperative agreements are anticipated to be awarded by September 30, 2003. Substantial involvement by EPA in the cooperative agreement may include: The EPA project officer participating in monthly conference calls, consulting on the agenda for regional meetings, or attending steering committee meetings, etc. New applicants are encouraged to submit proposals. Proposals from existing P2Rx centers will compete with new proposals for new regional centers.

2. *Catalogue of Federal Domestic Assistance*. The number assigned to this program in the Catalogue of Federal Domestic Assistance is 66.708.

IV. Eligibility

1. *Applicants*. In accordance with the Pollution Prevention Act of 1990, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all federally recognized Indian tribes that meet the requirement for treatment in a manner similar to a State at 40 CFR 35.663 and intertribal consortia that meet the requirements at 40 CFR 35.504. For convenience, the term ''State'' in this Notice refers to all eligible applicants. Local governments, private universities, private nonprofit, private businesses, and individuals are not eligible for funding. Eligible applicants are encouraged to establish partnerships with other environmental assistance providers to seamlessly deliver pollution prevention assistance. In many cases, partnerships can make the most efficient use of Federal/State government funding. In cases where applicants are not clear, an instrumentality of the State by given name, the applicant must provide proof that the applicant is indeed a State or interstate agency/organization.

2. *Matching requirements*. Under the Pollution Prevention Act of 1990, the Federal Government will provide up to half of the total allowable costs of the project, and the State will provide the remainder. For example, a project costing $200,000 could be funded by a grant for up to $100,000 from the Federal Government. The State is responsible for providing the remainder. State contributions may include cash, in–kind goods and services, and third party contributions.

V. Application and Submission Information

1. *Preapplication coordination*. This program is eligible for coverage under Executive Order 12372 ''Intergovernmental Review of Federal Programs'' (and the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act). An applicant should consult the Office or official designated as the single point of contact in his or her State for more information on the process the State requires to be followed in applying for assistance, if the State has selected the program for review. The single point of contact must notify in writing, the Grants Administration Division of the Environmental Protection Agency whether their State's official Executive Order 12372 process will review applications in this program within 30 days of this **Federal Register** Notice.

2. *Preapplication assistance*. Federal forms that should be included in the proposal are: Application for Federal Assistance OMB Form 424; Budget Information Form 424A; Construction Assurances Form 424B: Certification Regarding Debarment, etc., Form 5700–49; Certification Regarding Lobbying; and EPA Civil Rights Form 4700–4. Forms can be obtained at http://www.epa.gov/ogd/AppKit/application.htm. Requests for forms, examples of currently funded cooperative agreements, or other questions should be made to the contact listed under the heading **FOR FURTHER INFORMATION CONTACT**.

3. *Activities to be funded*. EPA is inviting proposals from the existing P2Rx centers as well as requesting new applicants, who will coordinate their proposed work with the existing P2Rx centers. EPA is seeking proposals that will contribute to the organization and efficient retrieval of P2 information. New applicants will work with existing P2Rx centers and provide their own unique areas of expertise as part of their national collaboration. For instance, the P2Rx centers have developed

agreements on data base structure, data base fields, keywords and use of P2 thesaurus to facilitate P2 information sharing nationally. Proposals may also include tasks supporting State and local P2 information activities such as: Creating web sites, listserves, training, meetings, etc. Proposals should be coordinated with existing P2Rx centers, where possible.

i. *Promote multimedia pollution prevention.* Proposals should describe how tasks will encourage source reduction to prevent pollution across all environmental media: Air, water, and land. Applicants should identify the areas of P2 expertise they will develop and collect resources as well as disseminate information on these areas. Current P2Rx centers have developed a specific format for the presentation and dissemination of P2 information to assistance providers. The home page for P2Rx at http://www.p2rx.org shows the topic hubs currently available nationally. See http://www.p2rx.org/AdminInfo/THFuncSpec.cfm for information describing a ''topic hub.''

ii. *Describe how activities will advance State or regional environmental goals.* Areas of expertise described above should address State and regional environmental concerns. Proposals should identify how the tasks will provide information resources and services to address regional environmental concerns. Proposals should describe the process used to identify area(s) of specialization and identify the State or local programs consulted. Some current P2Rx centers use steering or advisory committees composed of representatives from the State, local, or business programs.

iii. *Promote partnerships.* The proposal should identify major environmental assistance providers in the area and proposed tasks targeting these organizations. These tasks should leverage expertise of other P2Rx centers and aim to reduce duplication of effort in developing environmental assistance expertise and information products with other assistance providers. The P2Rx centers have formed their own national network and identified the duties of a partner center in the ''center criteria standard'' found at: http://www.p2rx.org/AdminInfo/criteria.cfm. Activities in the P2Rx national partnership include participation in national meetings, monthly conference calls, subcommittees, and face-to-face meetings, implementation of standards, maintaining accurate web site information and participating in collecting center activity measures twice a year. The P2Rx program coordinator works with the P2Rx centers to facilitate communication, promote discussion, and resolve issues.

EPA continues to seek more cooperation among State pollution prevention programs and the other assistance providers. Partnerships are encouraged with State, regional and national programs such as National Institute of Standards and Technology Manufacturing Extension Partnership programs, Office of Enforcement and Compliance Assistance supported Compliance Assistance Centers, EPA's Small Business Assistance Programs, and the Small Business Development Centers, etc. Some of the current P2Rx centers are co–located with these other assistance providers. Co–location can promote improved communication and sharing of information and resources.

iv. *Identifiable measures of success.* Applicants are encouraged to identify how and what criteria they are using to track the effectiveness of each proposed task. Measures of success could be measures of direct environmental improvement or should be directly linked to such measures. Many of the EPA regional offices have negotiated with their States measurement structures which may provide some appropriate measures for use by P2 information assistance programs. The P2Rx centers have agreed to specific activity and web site usage measures for reporting twice a year. Measures of P2Rx services as described at this URL: http://www.p2rx.org/AdminInfo/activityMe.cfm. This URL describes the web activity measures that the P2rx centers currently collect: http://www.p2rx.org/AdminInfo/WebMeasure.cfm. These measures are submitted to the P2Rx program coordinator twice a year and are combined to provide a national report on P2Rx activities.

Applicants should propose some way of utilizing State representatives to guide, evaluate, and provide feedback on the information services the applicant is proposing. Applicants are encouraged to make use of existing regional organizations to provide feedback over the course of the grant. Monthly conference calls, meetings tied into existing regional meetings, or web site comments could be used as a source of customer feedback.

4. *Content and format of proposal.* The Standard Form 424, 424A, and other forms as provided by EPA must be used for this program. The proposal should:

i. Identify the lead agency applying for funds, other involved agencies and key contacts.

ii. Describe the problem or issues the proposal will address and the current status of P2 efforts on this problem in the State or region.

iii. Summarize the project strategy, objectives, goals, and measures of success.

iv. Provide a schedule for implementation which specifies the tasks, estimated cost, deliverables, and estimated due dates.

v. A budget indicating the funding requested and the matching resources for the proposal. Requested Federal dollars must be matched by at least an equal value of funds and/or in–kind goods and services.

vi. Describe the experience of key project personnel and the organization's capabilities and experience as it relates to the proposed tasks.

vii. Provide the specific format for reporting measures or activities that reflect the effectiveness of each of the proposed tasks.

viii. Include completed standard application forms: SF 424 and SF 424A.

ix. Include at least two letters of support from State or other programs which provide technical assistance.

VI. Review and Selection Process

1. *Review process.* A national panel, comprised of EPA representatives from both Headquarters and the EPA Regions, will evaluate each proposal. EPA will review all proposals for quality, strength, and completeness against the criteria described below.

2. *Criteria for selecting a proposal.* Acceptable proposals must meet the eligibility requirements in Unit IV. EPA is seeking proposals that will contribute to the organization and efficient retrieval of P2 information. EPA will consider the regional location of the proposed center, in order to ensure that P2 information derived from all of the United States is included in the Pollution Prevention Information Network. Below are listed seven criteria used to evaluate proposals. Proposals may receive up to 100 points maximum.

i. *Project description and justification.* The proposal presents a clear description of the areas of expertise and/or P2 information products to be developed that will address State and regional environmental concerns. Justification is given for how these services will address regional environmental concerns. (15 points)

ii. *Project objectives.* The proposal specifies realistic goals or objectives to advance P2/multi–media solutions to address regional environmental concerns. (10 points)

iii. *Project strategy.* The proposal includes a well–conceived strategy to achieve the project goals and objectives and a proposed schedule for execution

of the tasks associated with each goal. (15 points)

iv. *Project management.* The proposal identifies and describes qualifications of key personnel. Proposals identify other environmental assistance providers committed to the tasks. Proposals leverage expertise of other P2Rx centers and other assistance providers to reduce duplication of effort in developing information products. (15 points)

v. *Identified measures for project.* The proposal contains clear measures of success. Proposals identify criteria used to track the effectiveness of each proposed task and include the specific format for reporting measures. (20 points)

vi. *Budget.* The proposal includes a budget indicating the funding requested and the matching resources. Requested Federal dollars must be matched by at least an equal value of funds and/or in–kind goods and services. The description demonstrates effective and judicious use of Federal funds. (15 points)

vii. *Partnerships.* The proposal utilizes State, local and regional representatives to guide, evaluate, and provide feedback on the products and services the regional center proposes. (10 points)

3. *Anticipated award date.* Cooperative agreements will be awarded by September 30, 2003. EPA reserves the right to reject all proposals and make no awards. Any dispute will follow the process in accordance with 40 CFR 30.63 and part 31, subpart F.

VII. Post Award Reporting

1. *Reports.* Organizations that are awarded grant funds will be required to submit semi–annual progress reports, during the life of the project, to the EPA Project Officer and EPA Headquarters coordinator. Each report will summarize funds expended, tasks accomplished, and results achieved to date. A specific format for reporting P2 information center activities (http://www.p2rx.org/AdminInfo/activityMe.cfm) and web site usage (http://www.p2rx.org/AdminInfo/WebMeasure.cfm) has been developed. A summary final grant report will also be due 90 days after the end of the project period. This final report should include a discussion of the prospects for continuation, project evaluation, and future direction.

2. *Audits.* Periodic audits should be made as part of the recipient's system of financial management and internal control to meet terms and conditions of grants and other agreements. In accordance with the provisions of OMB Circular No. A–133, ''Audits of States, Local Governments, and Nonprofit Organizations,'' nonfederal entities that receive financial assistance of $300,000 or more within the State's fiscal year shall have an audit made for that year. The Office of Management and Budget (OMB) Circular No. A–133, ''Audits of States, Local Governments, and Nonprofit Organizations,'' was published in the **Federal Register** of June 30, 1997 (62 FR 35302). The Circular implements the Single Audit Act amendments of 1996. State agencies that receive less than $300,000 within the State's fiscal year shall have an audit made in accordance with Federal laws and regulations governing the programs in which they participate.

3. *Records.* Financial records, including all documents to support entries on accounting records to substantiate charges to each grant, must be kept available to personnel authorized to examine EPA grant accounts. All records must be maintained for 3 years from the date of submission of the annual financial status report. If questions still remain, such as those raised as a result of an audit, related records should be retained until the matter is completely resolved.

VIII. Congressional Review Act

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grant administration, Grants, pollution prevention.

Dated: March 11, 2003.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–6820 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7471–5]

Science Advisory Board; Notification of Public Advisory Committee; Meeting; Executive Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB) Executive Committee (EC), a Federal Advisory Committee, will hold a public teleconference meeting on the date and time given below to review the SAB draft report on its review of the Fiscal Year 2004 Science and Technology Budget.

DATES: The conference call meeting will take place on Thursday, April 10, 2003, from 12 noon to 1 p.m.(e.s.t.). Requests for oral comments, as well as submission of written comments must be received by April 4, 2003. Please see further details below.

ADDRESSES: The conference call will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit comments must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4546; Fax (202) 501–0582; or via e-mail at *flaak.robert@epa.gov.*

To pre-register for the teleconference and obtain the phone number and access code, please contact Ms. Betty Fortune, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4533, Fax (202) 501–0323; or via e-mail at: *fortune.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

1. *Summary:* Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the EC of the U.S. EPA Science Advisory Board (SAB) will hold a public teleconference meeting to review a report of one of its subcommittees. The interested public may attend through a telephonic link, to the extent that lines are available. Pre-registration is necessary. Additional instructions about how to participate in the conference are given below.

In this meeting, the EC plans to review a report from its *Science and Technology Review Panel (S&TRP) (EC)* -Review of the FY2004 Science and Technology (S&T) Budget: An SAB Report. The background materials used by the Review Panel in its original deliberations are available from the originating EPA Office, (for further information *see* 67 FR 79912, December 31, 2002, *http://www.epa.gov/fedrgstr/EPA–MEETINGS/2002/December/Day-31/m32987.htm.)*

General information about the EPA Science Advisory Board, may be found on the SAB Web site (*http://www.epa.gov/sab*).

2. *Requests for Comment:* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Flaak no later than noon eastern standard time on April 4, 2003. Written comments should also be sent to Mr. Flaak prior to the meeting. Submission of written comments by e-mail to Mr. Flaak will maximize the time available for review by the EC.

3. *Availability of Review Materials:* A draft of the SAB report listed above will be available to the public at the SAB Web site under the heading for the EC Public Teleconference, April 10, 2003, *(http://www.epa.gov/sab/whatsnew.htm)* approximately one week prior to the meeting.

4. *Charge to the Executive Committee:* The focus of the EC review of this report will be on the following questions: (a) Has the SAB adequately responded to the questions posed in the charge? (b) Are the statements and/or responses in the draft report clear? And (c) are there any errors of fact in the report?

5. *General Guidance on Providing Oral or Written Comments at SAB Meetings:* It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the face-to-face meetings. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend face-to-face meeting are also asked to bring 35 copies of their comments for public distribution.

Dated: March 17, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–6819 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0086; FRL–7297–1]

Methoxyfenozide; Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0086, must be received on or before April 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0086. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to

access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0086. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0086. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch PIRIB (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0086.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0086. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI, if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be

included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 13, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 3E6527, 3E6528, and 3E6533

EPA has received pesticide petitions 3E6527, 3E6528, and 3E6533 from the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of methoxyfenozide in or on the raw agricultural commodities (RAC): Vegetable, cucurbit, group 9 at 0.3 parts per million (ppm) (3E6527), pea, blackeyed, seed and pea, southern, seed at 4.0 ppm (3E6528), okra at 2.0 ppm (3E6533), and turnip, greens at 30 ppm (3E6533). EPA has determined that the petitions contain data or information regarding the elements set forth in section (408)(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of methoxyfenozide residues in plants and animals is adequately understood and was previously published in the **Federal Register** of July 5, 2000 (65 FR 41355) (FRL–6497–5).

2. *Analytical method*. Adequate enforcement methods are available for determination of methoxyfenozide residues in plant commodities. The available Analytical Enforcement Methodology was previously reviewed in the **Federal Register** of (September 20, 2002 67 FR 59193).

3. *Magnitude of residues*. Complete residue data for methoxyfenozide on okra; turnip greens; cucurbit vegetables; pea, blackeyed; and pea, southern have been submitted. The requested tolerances are adequately supported.

B. Toxicological profile

The toxicological profile and endpoints for methoxyfenozide which supports this petition to establish tolerances were previously published in the **Federal Register** of September 20, 2002 (67 FR 59193) (FRL–7198-5).

C. Aggregate Exposure

1. *Dietary exposure*. Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population subgroups to residues of methoxyfenozide. These analysis cover all registered crops, as well as, uses pending with the Agency, active and proposed section 18 uses, and proposed IR-4 minor uses. There are no registered residential nonfood uses of methoxyfenozide.

i. *Food*—a. *Acute exposure*. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on methoxyfenozide including the acute neurotoxicity study in rats, the developmental toxicity study in rats and the developmental toxicity study in rabbits. Since no acute toxicological endpoints were established, Dow AgroSciences considers acute aggregate risk to be negligible.

b. *Chronic exposure*. Dow AgroSciences assumed 100% of crops would be treated and contain methoxyfenozide residues at the tolerance level. Dow AgroSciences used the Dietary Exposure Evaluation Model (DEEM™, Novigen Sciences, Washington, DC) software for conducting a chronic dietary (food) risk analysis. DEEM™ is a dietary exposure analysis system that is used to estimate exposure to a pesticide chemical in foods comprising the diets of the U.S. population, including population subgroups. DEEM™ contains food consumption data as reported by respondents in the Department of Agriculture (USDA) continuing surveys of food intake by individuals conducted in 1994–1996.

ii. *Drinking water—Acute exposure*. Because no acute dietary endpoint was determined, Dow AgroSciences concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure*. Tier II screening-level assessments can be conducted suing the simulation models screening constration in ground water (SCI-GROW) and EPA's pesticide root zone model/exposure analysis modeling system (PRZM/EXAMS) to generate estimated environmental concentrations (EECs) for ground water and surface

water, respectively. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for methoxyfenozide (1.0 lb active ingredient/acre/season). PRZM/EXAMS was used to generate the surface water EECs, because it can factor the persistent nature of the chemical into the estimates.

The EECs for assessing chronic aggregate dietary risk used by the Agency are 6 parts per billion (ppb) in ground water, based on SCI-GROW and 98.5 ppb in surface water, based on the PRZM/EXAMS, long-term mean.

2. *Non-dietary exposure*. Methoxyfenozide is not currently registered for use on any residential non-food sites. Therefore, there is no non-dietary acute, chronic, short-term or intermediate-term exposure.

D. Cumulative Effects

Section (408)(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether methoxyfenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, it is assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. Using the DEEM™ exposure assumptions described in this unit, Dow AgroSciences has concluded that aggregate exposure to methoxyfenozide from the proposed new tolerances will utilize 18.9% of the chronic pollution adjusted dose (cPAD) for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1–6 years old at 37.6% of the cPAD and is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to methoxyfenozide in drinking water, the aggregate exposure is not expected to exceed 100% of the cPAD. Dow AgroSciences concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (UF) usually 100 for combine inter-species and intra-species variability and not the additional tenfold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The toxicology data base for methoxyfenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to methoxyfenozide. There is a complete toxicity data base for methoxyfenozide and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the completeness of the data base and the lack of prenatal and postnatal toxicity, EPA determined that an additional safety factor was not needed for the protection of infants and children.

Since no toxicological endpoints were established, acute aggregate risk is considered to be negligible. Using the exposure assumptions described in this unit, Dow AgroSciences has concluded that aggregate exposure to methoxyfenozide from the proposed new tolerances will utilize 37.6% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Drinking water. The back-calculated drinking water levels of concern (DWLOCs) for assessing chronic aggregate dietary risk range from 624 ppb for the most highly exposed population subgroup children (1 to 6) years old to 2,839 ppb for the U.S. population (48 contiguous States) (all seasons). Despite the potential for exposure to methoxyfenozide in drinking water, Dow AgroSciences does not expect the aggregate exposure to exceed 100% of the cPAD. Short-term and intermediate-term risks are judged to be negligible due to the lack of significant toxicological effects observed. Based on these risk assessments, Dow AgroSciences concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to methoxyfenozide residues.

F. International Tolerances

There are no Codex or Canadian maximum residue levels (MRL's) established for residues of methoxyfenozide. Mexican MRL's are established for residues of methoxyfenozide in cottonseed 0.05 ppm and maize 0.01 ppm. The U.S. tolerances on these commodities are 2.0 ppm and 0.05 ppm, respectively. Based on the current use patterns, the U.S. tolerance levels cannot be reduced to harmonize with the Mexican MRL's, so incompatibility will exist.

[FR Doc. 03–6821 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0049; FRL–7295–5]

Tralkoxydim; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0049, must be received on or before April 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Pesticide manufacturing (NAICS 311)
- Food manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0049. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the

system, select ''search,'' and then key in docket ID number OPP–2003–0049. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0049. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0049.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0049. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and record keeping requirements.

Dated: March 13, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection, Inc.

PP 6F4631

EPA has received a pesticide petition (6F4631) from Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC, 27419–8300 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of tralkoxydim, 2-Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl), in or on the raw agricultural commodity (RAC) barley grain, barley hay, wheat grain, and wheat hay at 0.02 parts per million (ppm) and barley straw, wheat forage, and wheat straw at 0.05 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in barley, wheat, rotational crops, and livestock is adequately understood. The residues of concern for the tolerance expression are parent *per se*. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use of tralkoxydim on wheat and barley. Tralkoxydim rapidly metabolizes in plants, and no residues of parent are detected at harvest. Extensive metabolism in grain, forage and straw occurs, with none of the individual metabolites exceeding 3.6% total radioactive residue (TRR).

2. *Analytical method*. An adequate analytical method, gas chromatography/mass spectrometry (GC/MS) with selected ion monitoring, is available for enforcement purposes.

3. *Magnitude of residues*. Magnitude of the residue trials conducted on spring wheat, winter wheat, and barley showed no residues above the limit of quantification ((LOQ) = 0.02 ppm) on wheat grain, straw, hay, or processed commodities at the harvest timing prescribed by the label. Residues in forage ranged from <0.02 ppm to 0.03 ppm at 28 days posttreatment. Based on the results of animal metabolism studies, it is unlikely that significant residues would occur in secondary animal commodities from the use of tralkoxydim on wheat and barley. The nature of the residue in plants is adequately understood.

B. Toxicological Profile

1. *Acute toxicity*. EPA has established an acute reference dose (RfD) for tralkoxydim of 0.3 milligrams/kilogram/day (mg/kg/day). This RfD is based on the no observed adversed effect level (NOAEL) of 30 mg/kg/day established in the rat developmental study and using an uncertainty factor (UF) of 100 based on 10X for inter-species extrapolation and 10X for intra-species variation.

2. *Genotoxicity*. Tralkoxydim was negative for mutagenic/genotoxic effects in a gene mutation Ames Assay in bacteria, a forward gene mutation in mouse lymphoma cells in culture, chromosome damage/*in vitro* assay in human lymphocyte cells, deoxyribonucleic acid (DNA) damage repair *in vivo* assay in rat hepatocytes, and chromosome damage *in vivo* mouse micronuclei.

3. *Reproductive and developmental toxicity*. The developmental and reproductive toxicity data do not indicate increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to tralkoxydim. A 3–generation rat reproduction study indicated a parental systemic NOAEL of 200 ppm, 20 mg/kg/day and a systemic lowest observed averse effect level (LOAEL) of 1,000 ppm, 100 mg/kg/day based on reduced body weights and body weight gains in females. No reproductive toxicity was observed. A rat developmental study with a maternal NOAEL of 30 mg/kg/day and with a maternal LOAEL of 200 mg/kg/day based on maternal mortality, reduced body weights, and reduced food consumption and a developmental NOAEL of 30 mg/kg/day and a developmental LOAEL of 200 mg/kg/day based on reduced ossification of the centrum and hemicentrum, centrum bipartite, misshapen centra and fused centra. A rabbit developmental study with a maternal NOAEL of 20 mg/kg/day and a maternal LOAEL of 100 mg/kg/day based on reduced food consumption and a developmental NOAEL of 20 mg/kg/day and a developmental LOAEL of 100 mg/kg/day based on abortions and increases in late resorptions.

4. *Subchronic toxicity*.Tralkoxydim is of low subchronic toxicity in 21–day dermal testing.

5. *Chronic toxicity*. EPA has established the RfD for tralkoxydim at 0.005 mg/kg/day. This RfD is based on NOAEL of 0.5 mg/kg/day in the chronic toxicity study in dogs with a 100–fold UF to account for interspecies extrapolation (10x) and intraspecies variability (10x). The Health Effects Division (HED) Cancer Assessment Review Committee (CARC) has classified tralkoxydim in accordance with the Agency's Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996), ''likely to being human carcinogen.'' This classification is based on the following factors:

- Occurrence of benign Leydig cell tumors at all dose levels with the incidences at the high dose exceeding the concurrent and historical control range.
- Lack of an acceptable carcinogenicity study in a second species as required by OPPTS Harmonized Guidelines.
- The relevance of the testicular tumors to human exposure can not be discounted.

6. *Animal metabolism*. Based on the results of animal metabolism studies it is unlikely that significant residues would occur in secondary animal commodities from the use of tralkoxydim on wheat and barley.

7. *Metabolite toxicology*. The nature of the residue in barley, wheat, rotational crops, and livestock is adequately understood. The residues of concern for the tolerance expression are parent *per se*.

8. *Endocrine disruption*. There has been no evidence of endocrine disruption concerns with resulting from tralkoxydim use on wheat and barley.

C. Aggregate Exposure

1. *Dietary exposure*. The proposed tolerances in or on RACs: Barley grain, barley hay, wheat grain, and wheat hay at 0.02 ppm, and barley straw, wheat forage, and wheat straw at 0.05 ppm are the first to be established for tralkoxydim. There is no reasonable expectation of residues of tralkoxydim occurring in meat, milk, poultry, or eggs from its use on wheat and barley. Risk assessments were conducted by EPA to assess dietary exposures from tralkoxydim as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute dietary risk assessment was conducted for tralkoxydim based on the NOAEL of 30 milligram/kilogram/day (mg/kg/day) from the rat developmental study. The acute dietary analysis using the dietary exposure evaluation model (DEEM) computer program estimates that the distribution of single-day exposures utilizes 0.02% of acute RfD.

ii. *Chronic exposure and risk*. The RfD for tralkoxydim is 0.005 mg/kg/day. This value is based on the systemic NOAEL of 0.5 mg/kg/day in the dog chronic feeding study with a 100–fold safety factor to account for interspecies extrapolation (10x) and intraspecies variability (10x).

iii. *Food*. A DEEM chronic exposure analysis was conducted using tolerance levels for wheat and barley and assuming that 100% of the crop is treated to estimate dietary exposure for the general population and 22 subgroups. The chronic analysis showed that exposures from the tolerance level residues in or on wheat, and barley for children 1 to 6 years old (the subgroup with the highest exposure) would be 1.4% of the RfD. The exposure for the general U.S. population would be less than 1% of the RfD.

A lifetime dietary carcinogenicity exposure analysis was conducted for tralkoxydim using the proposed tolerances along with the assumption of 100% of the crop treated and a Q* of 1.68×10^{-2} $(mg/kg/day)^{-1}$. A lifetime risk exposure analysis was also conducted using the DEEM computer analysis. The estimated cancer risk (5×10^{-7}) is less than the level that the Agency usually considers for negligible cancer risk estimates.

iv. *Drinking water*. Drinking water estimated concentrations (DWECs) for surface water (parent tralkoxydim) were calculated by EPA's pesticide root zone model (PRIZM) computer models to be an average of 9.1 parts per billion (ppb). the DWECs for ground water based on the computer model screening concentration in ground water (SCI-GROW2) were calculated to be an average of .016 ppb.

2. *Non-dietary exposure*. There are no non-food uses of tralkoxydim currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. No non-dietary

exposures are expected for the general population.

D. Cumulative Effects

EPA does not have, at this time, available data to determine whether tralkoxydim has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Tralkoxydim is structurally a cyclohexanedione. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tralkoxydim does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerances action, therefore, EPA has not assumed that tralkoxydim has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*—i. *Acute risk*. The acute dietary analysis based on the NOAEL of 30 mg/kg/day from the rat developmental study using the DEEM computer program estimates that the distribution of single-day exposures utilizes 0.02% of acute RfD. The drinking water level of comparisons (DWLOCs) for acute exposure to tralkoxydim in drinking water calculated for females 13 + years old was 9,000 ppb. The estimated average concentration in surface water for tralkoxydim is 9 ppb. EPA's acute DWLOC is well above the estimated exposures for tralkoxydim in water for the subgroup of concern. For ground water, the estimated environmental concentrations (EEC's) using the SCI-GROW model were all less than 1 ppb.

ii. *Chronic risk*. A DEEM chronic exposure analysis showed that exposure from tolerance level residues in or on wheat, and barley for children 1 to 6 years old (the subgroup with the highest exposure) would be 1.4% of the RfD. The exposure for the general U.S. population would be less than 1% of the RfD. The DWLOCs for chronic exposure to tralkoxydim in drinking water calculated for U.S. population was 150 ppb and for children (1 to 6 years old) the DWLOC was 50 ppb. The estimated average concentration in surface water for tralkoxydim is 9 ppb. EPA's chronic DWLOC is above the estimated exposures for tralkoxydim in water for the U.S. population and the subgroup of concern. Conservative model estimates SCI-GROW of the concentrations of tralkoxydim in ground water indicate that exposure will be minimal.

iii. *Cancer risk*. A DWLOC for cancer was calculated as 1 ppb. The estimated concentration in surface water and ground water for tralkoxydim for chronic exposure are 0.9 ppb, 2.8 ppb, (the 56–day concentration)/3, and 0.1 ppb, respectively. The model exposure estimates are less than the cancer DWLOC. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tralkoxydim residues.

2. *Infants and children*. The Agency concluded that an extra safety factor to protect infants and children is not needed based on the following considerations: The toxicology data base is complete for the assessment of special sensitivity of infants and children. The developmental and reproductive toxicity data do not indicate increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure. The NOAEL used in deriving the RfD is based on changes in liver function and morphology in male adult dogs (not developmental or neurotoxic effects) after chronic exposure and thus are not relevant for enhanced sensitivity to infants and children. Unrefined dietary exposure estimates (assuming all commodities contain tolerance level residues) overestimate dietary exposure. Model data used for ground water and surface water source drinking water exposure assessments result in estimates considered to be upper-bound concentrations. There are no registered uses for tralkoxydim that could result in residential exposures. EPA concludes that there is a reasonable certainty that no harm will result to children from aggregate exposure to tralkoxydim residues.

F. International Tolerances

There are no codex Alimentarius Commission (Codex) or Mexican maximum residue levels for tralkoxydim at this time.

[FR Doc. 03–6823 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0057; FRL–7296–6]

Trifloxysulfuron-sodium; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0057, must be received on or before April 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall

#2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed, or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0057. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0057. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0057.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0057. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI

on disk or CD ROM, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 10, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Syngenta Crop Protection, Inc, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection, Inc.

PP 1F6280

EPA has received a pesticide petition (1F6280) from Syngenta Crop Protection, Inc., Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of trifloxysulfuron-sodium in or on the raw agricultural commodities sugarcane at 0.01 parts per million (ppm), cottonseed at 0.05 ppm, cotton by-products at 1.0 ppm, citrus at 0.01, almond hulls at 0.01 ppm, almond nut meat at 0.01 ppm, and tomatoes at 0.01 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The primary metabolic pathways of trifloxysulfuron-sodium in plants (cotton, sugarcane and citrus) were similar to those described for animals, with certain extensions of the pathway in plants. The metabolism of trifloxysulfuron-sodium is well characterized in plants and animals and the data is adequate for tolerance setting purposes.

The metabolism profile in plants and animals supports the use of an analytical enforcement method that accounts for parent trifloxysulfuron-sodium. The multiple other metabolites formed in plants and animals are considered of equal or lesser toxicity than parent compound.

2. *Analytical method.* Syngenta Crop Protection, Inc. has submitted practical analytical methodology for detecting and measuring levels of trifloxysulfuron-sodium in or on raw agricultural commodities. This method is based on crop specific cleanup procedures and determination by liquid chromatography with a ultraviolet (UV/Vis) detector. The limit of detection (LOD) for each analyte of this method is 2 nanograms of trifloxysulfuron-sodium. The limit of quantitation (LOQ), as demonstrated by acceptable recoveries from fortified control samples, is 0.01 ppm for each substrate.

3. *Magnitude of residues.* A residue program was performed with trifloxysulfuron-sodium on a full geography to support use on cotton, sugarcane, citrus, and almonds. Adequate residue trials were performed to support the proposed use on tomatoes.

B. Toxicological Profile

1. *Acute toxicity.* Trifloxysulfuron-sodium has low acute toxicity. The oral LD_{50} in rats is >5,000 millgrams/kilogram (mg/kg) for males and females combined. The rat dermal LD_{50} is >2,000 mg/kg and the rat inhalation LC_{50} is >5.03 milligrams/liter (mg/L) air. Trifloxysulfuron-sodium is not a skin sensitizer in guinea pigs and is considered to have slight dermal or eye irritation in rabbits. End-use formulations of Trifloxysulfuron-sodium have similar low acute toxicity profiles.

2. *Genotoxicity.* Trifloxysulfuron-sodium has been tested for its potential to induce gene mutation and chromosomal changes in five different test systems. Trifloxysulfuron-sodium technical did not induce point mutations in bacteria (Ames assay in *Salmonella typhimurium* or *Escherichia coli*) or in cultured mammalian cells (Chinese hamster V79) and was not genotoxic in an *in-vitro* unscheduled DNA synthesis assay in rat hepatocytes. Chromosome aberrations were not observed in an *in-vitro* test using Chinese hamster ovary cells and there were no clastogenic or aneugenic effects on mouse bone marrow cell *in-vivo* in a mouse micronucleus test. These studies show that trifloxysulfuron-sodium is not genotoxic.

3. *Reproductive and developmental toxicity.* Data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat have been considered. In rabbit (0, 50, 100, 250, 500 mg/kg/day) and rat (0, 30, 300, 1,000 mg/kg/day) teratology studies there was no evidence of teratogenicity. Maternal toxicity was seen at 500 mg/kg/day and 250 mg/kg/day as evidenced by deaths and premature sacrifices. For the control (50, 100, and 250 mg/kg) groups, pre-implantation losses, number of implantation sites, and post-implantation losses were not affected by treatment. The findings after fetal post mortem examination and fetal visceral examination revealed no treatment related effects. Similarly, there were no skeletal malformations in this study and the incidence of anomalies and variations were not affected by treatment. In conclusion, the no observed adverse effect levels (NOAEL) for maternal toxicity was 100 mg/kg/day and the NOAEL for fetal toxicity was 250 mg/kg/day. There was no indication of embryotoxic, fetotoxic or teratogenic potential for trifloxysulfuron-sodium in rabbits.

In the rat teratology study, 300 and 1,000 mg/kg/day caused maternal toxicity consisting of reduced body weight and food consumption. Developmental toxicity was secondary to maternal toxicity and consisted of slightly reduced fetal body weights and an increase in minor skeletal anomalies and variations. The NOAELs for maternal and developmental toxicity were both 30 mg/kg/day. Trifloxysulfuron-sodium was not embryotoxic, fetotoxic or teratogenic in rats when tested under the conditions of this study.

In a rat multigeneration study, trifloxysulfuron-sodium technical was administered in feed at concentrations of 0, 500, 1,000, 8,000 or 12,000 ppm. The dose in mg/kg/day spans a wide range over the duration of the study as animals gain weight and go through gestation and lactation. The ranges are 24–70, 48–137, 400–1,133, 608–1,755 for males and 32–100, 60–199, 500–1,557, 792–2,374 for females at the 500, 1,000, 8,000, and 12,000 ppm dietary level, respectively.

Trifloxysulfuron-sodium had no effect on reproductive parameters. Parental body weight gain and food consumption were reduced at 12,000 ppm in both sexes and at 8,000 ppm in males only. In addition, there was an increased relative liver weight and an increased incidence of hepatocellular hypertrophy at 12,000 ppm in both sexes of adults and at 8,000 ppm in adult males only. Offspring body weights were reduced in males and females greater than or equal to 8,000 ppm.

In conclusion, the NOAEL for systemic toxicity in both sexes and both generations was 1,000 ppm. The mean dose in mg/kg/day for all weekly means for both sexes, both generations, all time points at this dietary level was 83.4 mg/kg/day. There were no effects on the reproductive parameters and the NOAEL for reproductive toxicity was >12,000 ppm. Offspring effects were observed only at dose levels that produced parental toxicity. Thus, there is no evidence that developing offspring are more sensitive than adults to the effects of trifloxysulfuron-sodium, and it is concluded, that trifloxysulfuron-sodium does not cause developmental or reproductive toxicity.

4. *Subchronic toxicity.* Trifloxysulfuron-sodium technical was evaluated in a number of subchronic studies. In a 3–month rat feeding study the NOAEL was 65.7 mg/kg with hematologic and liver effects noted. In a 3–month mouse feeding study, the NOAEL was 67.9 mg/kg. Effects seen were adaptive liver effects. In a 3–month feeding study in dogs the NOAEL was 19.6 mg/kg and hematopoietic and liver effects were seen. In a 28–day dermal (rat) study, the NOAEL was 100 mg/kg. In this study only body weight effects were noted, and only occurred at 1,000 mg/kg.

5. *Chronic toxicity.* Trifloxysulfuron-sodium technical was not oncogenic in rats or mice. In a 12–month feeding study in dogs fed diets containing trifloxysulfuron-sodium that resulted in average (sexes combined) daily test substance intakes of 0, 1.67, 6.71, 15.0, 48.2 or 122 mg/kg/day, all animals survived. In life observations, food consumption, eye and neurological examinations, and urine profiles were not affected by treatment. Macroscopic and microscopic examinations revealed no findings that were considered to be treatment related and indicative of systemic toxicity.

The body weight gain was decreased by 16% in males at 122 mg/kg/day. The 33% decrease at 48.2 mg/kg/day was mainly due to one male that gained significantly less weight than the other animals of this group. There was a tendency for a decrease in the erythrocyte count, hemoglobin concentration and hematocrit for both sexes at 122 mg/kg/day at the end of treatment, and for males throughout the treatment period. In female dogs treated with 48.2 and 122 mg/kg/day, the mean absolute and relative liver weights were increased, and a tendency for an increase in relative liver weight was noted for males at the same dose levels.

The maximum tolerance dose (MTD) was achieved at 122 mg/kg/day based on the decrease in the body weight gain in males at 48.2 and 122 mg/kg/day. Administration of trifloxysulfuron-sodium to dogs for 12 months caused a tendency for decrease in red blood cell parameters in both sexes at 122 mg/kg/day. There was neither histopathological nor functional evidence for compound related neurotoxicity. Based on the effects at 48.2 and 122 mg/kg/day, the NOAEL was established at 15.0 mg/kg/day for males and 14.9 mg/kg/day for females.

In an 18–month oncogenicity study, mice were fed diets containing trifloxysulfuron-sodium that resulted in average (sexes combined) daily test substance intakes of 0, 5.84, 24.3, 116, and 836 mg/kg/day. Treatment had no adverse effect on appearance or behavior. Survival in treated animals was comparable to controls. There were no effects on organ weights, and there were no macroscopic or microscopic findings indicative of treatment-related systemic toxicity. Trifloxysulfuron-sodium was not carcinogenic in the mouse. Body weight gain in females at 836 mg/kg/day was decreased by 21% compared to controls after 3 months and 16% after 18 months. Food consumption was decreased in this group by 8%. The MTD was achieved at 836 mg/kg/day based on a decrease in body weight gain of greater than 15% throughout the study. Trifloxysulfuron-sodium was not carcinogenic in the mouse. Based on the findings at 836 mg/kg/day, the NOAEL for chronic toxicity was established at 121 mg/kg/day for males and 112 mg/kg/day for females.

In a 2–year chronic toxicity and carcinogenicity study, rats were fed diets containing trifloxysulfuron-sodium that resulted in average (sexes combined) daily test substance intakes of 0, 2.08, 22.0, 91.0 or 464 mg/kg/day. Clinical signs, survival, eye examinations, blood chemistry, urinalysis, and water consumption were not adversely affected by treatment. Survival in high dose females was greater than 80%, than in controls of 60%. There were no treatment-related findings at the 12–month interim or terminal necropsy.

A treatment-related decrease in body weight gain (17% decrease compared to controls) was seen in both females and males at 464 mg/kg/day (10,000 ppm), which was considered to be the maximum tolerated dose (MTD). Overall food consumption was decreased by 6% in males or 9% in females at 464 mg/kg/day. At the interim and terminal

sacrifices, mean carcass weights were lower in males (9% and 13%, respectively) and females (17% and 12%, respectively) for the 464 mg/kg/day group. At terminal sacrifice, the testes to body weight ratio was increased by 19% in the 464 mg/kg/day group.

Microscopical examination revealed a non-dose responsive increase in the incidence of kidney tubular atrophy in the two top dose groups of female rats, and an increase in Leydig cell hyperplasia in high dose males only. Both treatment-related lesions occurred late in age/treatment, and were not seen in animals sacrificed in the initial year of the study. Neither lesion showed an increase in severity (only incidence) or a progression of the lesion. Both lesions are commonly seen in high incidence in aged control rats; 26% of control females showed renal tubular atrophy, and 22% of control males showed Leydig cell hyperplasia. The control incidence in 10 studies was less than 10%, suggesting that the animals in this study were particularly susceptible to this lesion. There were no data from other measured parameters in this study that suggest kidney or testis as target organs, therefore indicating that these lesions are high-dose, long-term effects.

In conclusion, the MTD was reached or exceeded at 464 mg/kg/day for the 2–year rat feeding study. The NOAEL in males was 82.6 mg/kg/day based on the increased incidence of Leydig cell hyperplasia, and 23.7 mg/kg/day in females based on the increased incidence of kidney tubular atrophy. There was no evidence of a carcinogenic effect after 2 years of treatment with trifloxysulfuron-sodium in rats.

6. *Animal metabolism*. Metabolism in rats proceeded primarily via three concurrent metabolic pathways (typical sulfonylurea chemistry: Oxidative o-demethylation, hydroxylation of the pyrimidine ring and Smiles rearrangement of the sulfonylurea. Hydrolysis of the sulfonylurea and oxidative O-demethylation are minor pathways in the rat. Parent compound was the major residue in the rat. The metabolite pattern in urine and feces extracts of dogs is similar to that of rats. Trifloxysulfuron-sodium was the major component detected in extracts of urine and feces for dogs, as in the rats. In hens and goats, the metabolite profile was very similar to that observed in the rat.

7. *Metabolite toxicology*. The metabolism profile for trifloxysulfuron-sodium supports the use of an analytical enforcement method that accounts for parent trifloxysulfuron-sodium. Other metabolites are considered of equal or lesser toxicity than parent compound.

8. *Endocrine disruption*. Trifloxysulfuron-sodium does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that trifloxysulfuron-sodium has any effect on endocrine function in development or reproduction studies. Furthermore, histological investigation of endocrine organs in chronic dog, mouse, and rat studies did not indicate that the endocrine system is targeted by trifloxysulfuron-sodium.

9. *Neurotoxicity*. In an acute range finding neurotoxicity study in which rats received a single oral dose of 2,000 or 3,500 mg/kg trifloxysulfuron-sodium, there were no effects on clinical signs, body weight and food consumption, or parameters in an abbreviated functional observational battery (FOB). Therefore, the time to peak effect for FOB and motor activity testing was based on a blood kinetic study. In this study, trifloxysulfuron-sodium induced peak plasma levels at 1–2 hours post-dose, and levels were almost zero at 24 hours.

In an acute neurotoxicity study in rats, trifloxysulfuron-sodium was administered by gavage at 0 or 2,000 mg/kg. Mortality, body weight development and food consumption were not affected by treatment. Neither clinical signs nor changes in observation and functional test conducted as part of the FOB were observed. Reduced horizontal and vertical motor activity were observed in males and females only at the time of peak effect (1–2 hours post-dosing). There were no persistent signs of toxicity and no histopathological evidence of neurotoxicity.

In a second acute neurotoxicity study in rats, trifloxysulfuron- sodium was administered by gavage at 0, 200, 600 and 2,000 mg/kg. Mortality, body weight development and food consumption were not affected by treatment. There were no effects on clinical signs or on parameters in the FOB. During the peak plasma period (1–2 hours post-dosing), motor activity parameters of the males were comparable to the control while females tended to be slightly less active. Based on the results of this study, Trifloxysulfuron-sodium was devoid of neurotoxic effects. Due to the slightly reduced motor activity in top dose females, the NOAEL was established at 600 mg/kg.

In a 90–day subchronic neurotoxicity study in rats, trifloxysulfuron-sodium was not neurotoxic when administered in the diet for 13 weeks at concentrations resulting in average daily test substance intakes of 0, 112, 472, or 967 mg/kg/day for males or 0, 134, 553 or 1,128 mg/kg/day for females. There were no treatment-related deaths or clinical signs. Effects on body weight development and food consumption indicated systemic toxicity in males at doses 472 mg/kg/day and in females at 1,128 mg/kg/day. There were no treatment-related neurobehavioral or motor activity effects, no macroscopic findings, and no microscopic findings in central or peripheral nervous tissue.

In the absence of any functional or morphological changes in the nervous system at any of the dose levels tested, trifloxysulfuron-sodium is considered devoid of neurotoxic potential when administered to rats for 90 days. Based on body weight effects, the NOAEL was established at 112 mg/kg/day for male rats and 553 mg/kg/day for female rats.

C. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure from trifloxysulfuron-sodium potentially exists through both food commodities and drinking water. Each exposure pathway is addressed below.

i. *Food*. Chronic dietary exposure to trifloxysulfuron-sodium was estimated based on proposed tolerance-based residue values and the assumption that 100% of all planted acres were treated. The assessment included cotton, processed cotton fractions, sugarcane and associated processed commodities, citrus, almonds and tomatoes. Chronic exposure for all populations was compared to a reference dose (RfD) of 0.15 milligrams/kilogram/body weight/day (mg/kg/bwt/day) based on a no observed adverse effect level (NOAEL) of 14.9 mg/kg/bwt/day from a 1–year study in dogs and a 100X uncertainty factor. The analysis was conducted using the dietary exposure evaluation model (DEEM™) and the USDA's 1994–96 Continuing Survey of Food Intake by Individuals (CSFII). Secondary residues in animal commodities were not considered in this evaluation since calculations showed that transfer from livestock and poultry was minimal and would result in residue levels significantly below current analytical method capabilities. Chronic exposure to trifloxysulfuron-sodium was found to be essentially zero with less than 0.1% of the RfD utilized for all populations. These exposure calculations are conservative in that 100% of the crop was assumed as treated and tolerance-based residue levels were entered into the dietary model.

Acute dietary assessments were conducted for trifloxysulfuron-sodium using proposed tolerance-based residue values and the assumption that 100% of all planted acres were treated. The assessment included cotton, processed cotton fractions, sugarcane and

associated processed commodities, citrus, almonds and tomatoes. Acute exposure to the female population (13–50 years old) was compared to a RfD of 0.30 mg/kg/bwt/day based on a NOAEL of 30 mg/kg/bwt/day from a rat teratology study and a 100X uncertainty factor. Acute exposure to the general population and all other population subgroups (including infants and children) was compared to a RfD of 6.0 mg/kg/bwt/day based on a NOAEL of 600 mg/kg/bwt/day from an acute neurotoxicity study in rats and a 100X uncertainty factor. The analyses were conducted using the Dietary Exposure Evaluation Model (DEEM™) from Novigen Sciences and the USDA's 1994–96 CSFII. Secondary residues in animal commodities were not considered in this evaluation since calculations showed that transfer from livestock and poultry was minimal and would result in residue levels significantly below current analytical method capabilities. The acute exposures are presented at the 99.9th percentile of exposure although the Agency accepts the 95th percentile when conservative Tier I estimates are made (tolerance-based residues and 100% crop treated assumptions). Even at the 99.9th percentile, exposure and subsequent risk was found to be 0.2% of the acute reference dose (aRfD) for the female population (13–19 years not pregnant or nursing) and essentially zero with less than 0.1% of the aRfD utilized for all other populations. These exposure calculations are conservative in that 100% of the crop was assumed as treated, and tolerance-based residue levels were entered into the dietary model.

ii. *Drinking water*. For chronic exposure in water, the estimated maximum concentrations of trifloxysulfuron-sodium in surface water at day 56/3 was 0.35 parts per billion (ppb) generic expected environmental concentration (GENEEC) (sugarcane) and 0.051 ppb in ground water (SCI-GROW) (turf). The chronic drinking water levels of concern (DWLOC) values were calculated and compared to these estimated water concentrations. From the chronic dietary exposure analysis, an exposure estimate of 0.000015 mg/kg/day was determined for the U.S. population and less than or equal to 0.000037 mg/kg/day for all subgroups. Using this information, chronic drinking water levels of concern ($DWLOC_{chronic}$) were calculated for trifloxysulfuron-sodium. The trifloxysulfuron-sodium estimated ground water (0.051 ppb) and surface water (0.35 ppb) concentrations do not exceed the calculated chronic DWLOC values (µg/L): 1,500 to 5,250). Therefore, trifloxysulfuron-sodium exposures would not exceed the exposure allowable by the chronic risk cup.

The estimated maximum proposed rates for the ''worst case'' estimation of the proposed use concentrations of trifloxysulfuron-sodium in surface water at Peak Day–0 was 2.56 ppb GENEEC (sugarcane) and 0.051 ppb in ground water (SCI-GROW) (turf). The acute DWLOC values were calculated and compared to these estimated water concentrations.

From the acute dietary exposure analysis, the lowest margin of exposure (MOE) from the use of trifloxysulfuron-sodium was at the 95th percentile for the U.S. population and all population subgroups. This indicates a food exposure of less than or equal to 0.00016 mg/kg/day for all populations. Based on the EPA's ''Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments'' document (draft 12/2/97), acute drinking water levels of concern ($DWLOC_{acute}$) were calculated for trifloxysulfuron-sodium. The lowest acceptable MOE for any pesticide is 100. This value was used in the DWLOC calculations. Based on this analysis, trifloxysulfuron-sodium estimated surface water (2.56 ppb) and ground water (0.051 ppb) concentrations, for sugarcane, do not exceed the calculated acute DWLOC values (µg/L: 8997 to 209,965). Therefore, trifloxysulfuron-sodium exposures would not exceed the exposure allowable by the risk cup.

2. *Non-dietary exposure*. The acute MOE for children ingesting pesticide-treated turf exceeds 190 million. The risk estimate does not exceed the level of concern (MOE = 100), indicating there are no oral exposure concerns for children ingesting trifloxysulfuron-sodium-treated turf.

D. Cumulative Effects

The potential for cumulative effects of trifloxysulfuron-sodium and other substances that have a common mechanism of toxicity has also been considered. Trifloxysulfuron-sodium is a member of the class of herbicides designated as sulfonylureas. There is no reliable information to indicate that toxic effects produced by trifloxysulfuron-sodium would be cumulative with those of any other chemical including another pesticide. Therefore, Syngenta believes it is appropriate to consider only the potential risks of trifloxysulfuron-sodium in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population*. In assessing the potential for additional sensitivity of infants and children to residues of trifloxysulfuron-sodium, data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat have been considered.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of trifloxysulfuron-sodium, data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat have been considered. In rabbit (0, 50, 100, 250, 500 mg/kg/day) and rat (0, 30, 300, 1,000 mg/kg/day) teratology studies there was no evidence of teratogenicity. Delayed fetal development was apparent only at maternally toxic doses of trifloxysulfuron-sodium technical in rats. In rabbits, 500 mg/kg/day was clearly toxic to does and at 250 mg/kg/day,lesser toxicity was seen. For the control (50, 100, and 250 mg/kg) groups, pre-implantation losses, number of implantation sites, and post-implantation losses were not affected by treatment. The findings after fetal post mortem examination and fetal visceral examination revealed no treatment related effects. Similarly, there were no skeletal malformations in this study and the incidence of anomalies and variations were not affected by treatment. The no observed adverse effect levels (NOAEL) for maternal toxicity was 100 mg/kg/day and the NOAEL for fetal toxicity was 250 mg/kg/day. There was no indication of embryotoxic, fetotoxic, or teratogenic potential for trifloxysulfuron-sodium in rabbits.

In the rat teratology study developmental toxicity was secondary to maternal toxicity and consisted of slightly reduced fetal body weights and an increase in minor skeletal anomalies and variations. The NOAELs for maternal and developmental toxicity were both 30 mg/kg/day. Trifloxysulfuron-sodium was not embryotoxic, fetotoxic, or teratogenic in rats when tested under the conditions of this study.

In a rat multigeneration study, trifloxysulfuron-sodium had no effect on reproductive parameters. The NOAEL for systemic toxicity in both sexes and both generations was 1,000 ppm. The mean dose in mg/kg/day for all weekly means for both sexes, both generations, all time points at this dietary level was 83.4 mg/kg/day. There were no effects on the reproductive parameters and the NOAEL for

reproductive toxicity was > 12,000 ppm. Offspring effects were not observed at dose levels that did not produce parental toxicity. There is no evidence that developing offspring are more sensitive than adults to the effects of trifloxysulfuron-sodium.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological requirements, the data base for trifloxysulfuron-sodium relative to prenatal and postnatal effects for children is complete. Further, for trifloxysulfuron-sodium, the developmental studies showed no increased sensitivity in fetuses as compared to maternal animals following *in-utero* exposures in rats and rabbits, and no increased sensitivity in pups as compared to the adults in the multi-generation reproductive toxicity study. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that a RfD of 0.15 mg/kg/day is appropriate for assessing aggregate risk to infants and children of trifloxysulfuron-sodium.

Assuming tolerance level residues and 100% of crops treated, less than 0.1% of the trifloxysulfuron-sodium chronic RfD is utilized in the population subgroup all infants (>1 year old). Therefore, based on the completeness and reliability of the toxicity data base, Syngenta concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to trifloxysulfuron-sodium residues.

F. International Tolerances

There are no Codex MRLs established for residues of trifloxysulfuron-sodium on cottonseed, cotton byproducts, citrus, almonds, sugarcane or tomatoes.

[FR Doc. 03–6822 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7471–2]

Strategic Plan for North American Cooperation in the Conservation of Biodiversity—Draft for Public Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Comments are requested on the final draft of the *Strategic Plan for North American Cooperation in the Conservation of Biodiversity* (Strategic Plan). The Strategic Plan has been prepared by the Secretariat of the Commission for Environmental Cooperation (CEC), under the North American Agreement on Environmental Cooperation, in coordination with representatives from Canada, Mexico, and the United States. The Strategic Plan will be used to guide the CEC Council, its Biodiversity Conservation Working Group, and the CEC Secretariat in their work with stakeholders in cooperatively defining and implementing mutually beneficial biodiversity conservation activities in North America. Comments will be categorized and responses will be developed for each category. Responses to comment categories will be published in the **Federal Register** within 45 days of the closing date for comments. Changes to the final draft of the Strategic Plan, to be made in response to comments, will be discussed with representatives from Canada, Mexico and the CEC Secretariat.

DATES: Written comments will be accepted for 30 calendar days. Please submit or postmark written comments on the final draft document by April 21, 2003.

ADDRESSES: Comments should be sent to Patrick Cotter, Office of International Affairs (2260R), U.S. Environmental Protection Agency, and 1300 Pennsylvania Avenue, NW., Washington, DC 20004. Faxed comments should be sent to Patrick Cotter at (202) 565–2409. Comments can also be sent by email to *Cotter.Patrick@epa.gov.*

Access to the Document: The complete text of the final draft document, in English, is available through a link on the EPA Office of International Affair's Web site at: *http://www.epa.gov/international/trade/index.html,* or you may access the document directly on the CEC's Web site at: *http://www.cec.org/pubs_docs/documents/index.cfm?varlan=english&ID=1088.* Copies of the final draft document can be obtained in electronic or hard copy format by request from Patrick Cotter at the above mailing address, email address or by calling (202) 564–6414.

FOR FURTHER INFORMATION CONTACT: Patrick Cotter by telephone at (202) 564–6414 or by email at *Cotter.Patrick@epa.gov.*

Dated: March 17, 2003.

Dona M. Harris,

Acting Director, Office of Management Operations, Office of International Affairs.

[FR Doc. 03–6818 Filed 3–20–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0281]

Agency Information Collection Activities; Announcement of OMB Approval; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 18, 2002 (67 FR 77498), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0183. The approval expires on March 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6739 Filed 3–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0583]

Food Security Preventive Guidances; Availability

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two revised, final guidance documents related to food security entitled ''Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance,'' and ''Importers and Filers: Food Security Preventive Measures Guidance.'' The revised, final guidance document entitled ''Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance'' is designed as an aid to operators of food establishments (for example, firms that produce, process, store, repack, re-label, distribute, or transport food or food ingredients). It identifies the kinds of preventive measures that operators may take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal or terrorist actions. The revised, final guidance document entitled ''Importers and Filers: Food Security Preventive Measures Guidance'' is designed as an aid to operators of food importing establishments, storage warehouses, and filers. It identifies the kinds of preventive measures that they may take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal or terrorist actions.

DATES: You may submit written or electronic comments on either guidance document at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance'' or ''Importers and Filers: Food Security Preventive Measures Guidance'' to John Kvenberg, Office of Compliance, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the guidance documents to Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2359, e-mail: jkvenberg@cfsan.fda.gov or Donald W. Kraemer, Center for Food Safety and Applied Nutrition (HFS–400), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2300, e-mail: dkraemer@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Operators of food establishments, food importing establishments, and filers are encouraged to review their current security procedures and controls in light of the potential for tampering or other malicious, criminal or terrorist actions and make appropriate improvements.

The revised, final guidance document entitled ''Food Producers, Processors, and Transporters: Food Security Preventive Measures Guidance'' aids operators of food establishments (i.e., firms that produce, process, store, repack, re-label, distribute, or transport food or food ingredients). It is relevant to all sectors of the food system, including farms, aquaculture facilities, fishing vessels, producers, transportation operations, processing facilities, packing facilities, and warehouses. It is not intended as guidance for retail food store or food service establishments.

The revised, final guidance document entitled ''Importers and Filers: Food Security Preventive Measures Guidance'' aids operators of food importing establishments, storage warehouses, and filers.

Both guidance documents identify the kinds of preventive measures that operators can take to minimize the risk that food under their control will be subject to tampering or to criminal or terrorist actions. They take the operator through each segment of the farm-to-table system that is within their control, in order to minimize the risk of tampering or of criminal or terrorist action at each segment. Implementation of these measures requires commitment from both management and employees to be successful and, therefore, both should participate in their development and review.

Both guidance documents are level 1 guidances issued consistent with FDA's good guidance practices regulation (GGPs) (§ 10.115 (21 CFR 10.115)) relating to the development, issuance, and use of guidance documents.

On January 9, 2002, FDA announced the availability of two guidance documents in the **Federal Register** (67 FR 1224). At that time, the two documents were entitled ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance,'' and ''Importers and Filers: Food Security Preventive Measures Guidance.'' The agency solicited public comment, but indicated that the two guidance documents would be implemented immediately in accordance with § 10.115(g)(2). The two guidance documents were prompted by the tragedies of September 11, 2001, and the resulting scrutiny of, and interest in, food safety and security that followed.

FDA received 11 written comments and 5 electronic comments on the 2 guidance documents. The agency reviewed and evaluated these comments and modified the guidance where appropriate. A number of the comments urged FDA to issue guidance that was specifically tailored for the retail food store and food service sector. FDA agrees with the request. Accordingly, the draft guidance directed toward retail food stores and food service establishments is provided in ''Retail Food Store and Food Service Establishments: Food Security Preventive Measures Guidance,'' the availability of which is being announced elsewhere in this issue of the **Federal Register**. In that same notice, FDA is also announcing the availability of a draft guidance entitled ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance.'' The original two guidance documents are now being made available as revised, final guidance. They no longer apply to retail food stores or food service establishments.

The two final guidance documents represent the agency's current thinking on appropriate measures that can be taken by food establishments, importing establishments and filers to minimize the risk that food under their control will be subject to tampering or other malicious, criminal or terrorist actions. They do not create or confer any rights for, or on, any person and do not operate to bind FDA or the public.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments on the

guidance documents at any time. Two copies of any mailed comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of these guidance documents also are available on the Internet at http://www.cfsan.fda.gov/guidance.html.

Dated: March 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6842 Filed 3–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0092]

Food and Cosmetic Security Guidances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document related to food security entitled ''Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance'' and a draft guidance document related to cosmetics security entitled ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance.'' The draft guidance document entitled ''Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance'' is designed as an aid to operators of retail food stores and food service establishments (i.e., for example, bakeries, bars, bed-and-breakfast operations, cafeterias, camps, child and adult day care providers, church kitchens, commissaries, community fund raisers, convenience stores, fairs, food banks, grocery stores, interstate conveyances, meal services for homebound persons, mobile food carts, restaurants, and vending machine operators). It identifies the kinds of preventive measures that operators may take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal or terrorist actions. The draft guidance document entitled ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance'' is designed as an aid to operators of cosmetics establishments (i.e., firms that process, store, repack, relabel, distribute, or transport cosmetics or cosmetics ingredients). It identifies the kinds of preventive measures that operators may take to minimize the risk that cosmetics under their control will be subject to tampering or other malicious, criminal or terrorist actions.

DATES: Submit written or electronic comments on the draft guidance documents by May 20, 2003, to ensure their adequate consideration in the preparation of revised guidances, if warranted. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Retail Food Stores and Food Service Establishments: Food Security Preventive Measures Guidance,'' or ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance'' to John Kvenberg, Center for Food Safety and Applied Nutrition, (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-addressed adhesive label to assist that office in processing your request. Submit written comments on the draft guidance documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

FOR FURTHER INFORMATION CONTACT: John Kvenberg, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2359, e-mail: jkvenberg@cfsan.fda.gov or Donald W. Kraemer, Center for Food Safety and Applied Nutrition (HFS–400), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2300, e-mail: dkraemer@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Operators of retail food store, food service, and cosmetics establishments are encouraged to review their current security procedures and controls in light of the potential for tampering or other malicious, criminal or terrorist actions and make appropriate improvements.

FDA announced the availability of two guidance documents related to food security in the **Federal Register** of January 6, 2002 (67 FR 1224). They were entitled ''Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance'' and ''Importers and Filers: Food Security Preventive Measures Guidance.'' The agency solicited public comment, but indicated that the two guidance documents would be implemented immediately in accordance with § 10.115(g)(2) (21 CFR 10.115(g)(2)). The two guidance documents were prompted by the tragedies of September 11, 2001, and the resulting scrutiny of, and interest in, food safety and security that followed.

The agency reviewed and evaluated the comments it received (11 written and 5 electronic). A number of the comments urged the agency to issue guidance that was specifically tailored for the retail food store and food service sector. Accordingly, FDA is issuing this draft guidance document entitled ''Retail Food Store and Food Service Establishments: Food Security Preventive Measures Guidance.''

The draft guidance document entitled ''Retail Food Store and Food Service Establishments: Food Security Preventive Measures Guidance'' identifies the kinds of preventive measures that operators of retail food store and food service establishments (i.e., bakeries, bars, bed-and-breakfast operations, cafeterias, camps, child and adult day care providers, church kitchens, commissaries, community fund raisers, convenience stores, fairs, food banks, grocery stores, interstate conveyances, meal services for homebound persons, mobile food carts, restaurants, and vending machine operators) can take to minimize the risk that food under their control will be subject to tampering or other malicious, criminal or terrorist actions.

FDA is also requesting comment on whether the agency's package of food security guidance documents should be expanded to include coverage of cosmetics, in addition to foods. To facilitate such comments, FDA also is announcing the availability of a draft guidance document entitled ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance.'' The draft guidance document entitled ''Cosmetics Processors and Transporters: Cosmetics Security Preventive Measures Guidance'' identifies the kinds of preventive measures that operators of cosmetics establishments can take to

minimize the risk that cosmetics under their control will be subject to tampering or other malicious, criminal or terrorist actions. It takes the operator through each segment of the cosmetics production system that is within their control, in order to minimize the risk of tampering or other malicious, criminal or terrorist action at each segment. Implementation of these measures requires commitment from both management and employees to be successful and, therefore, both should participate in their development and review.

Both draft guidance documents are level 1 guidances issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance documents, when finalized, will represent the agency's current thinking on appropriate measures that retail food store, food service, and cosmetics establishments may take to minimize the risk of foods or cosmetics under their control will be subjected to tampering or other malicious, criminal or terrorist actions. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on either draft guidance document at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance documents and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of these draft guidance documents also are available on the Internet at http://www.cfsan.fda.gov/guidance.html.

Dated: March 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–6843 Filed 3–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: April 13, 2003, 5:00 p.m. to 9 p.m., April 14, 2003, 8:00 a.m. to 5:30 p.m., April 15, 2003, 8:30 a.m. to 4 p.m.

Place: The Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Status: The meeting will be open to the public.

Agenda: Agenda items will include, but not be limited to: Welcome; plenary session on performance evaluation, outcomes measurement and public accountability for the grant programs under the purview of the Committee with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. Meeting content will address the need for effective evaluation based on the stated purposes of the grant programs to ensure greater public accountability during an era of scarce federal resources. Proposed agenda items are subject to change as priorities dictate.

Public Comments: Public comment will be permitted before lunch and at the end of the Committee meeting on April 14, 2003. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Washington Terrace Hotel, Washington, DC, on April 14, 2003. These persons will be allocated time as the Committee meeting agenda permits.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Dated: March 13, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–6786 Filed 3–20–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a correction of a meeting of the President's New Freedom Commission on Mental Health to be held in April 2003.

Public notice was given in the **Federal Register** on March 18, 2003 (Volume 68, Number 52, page 12929) that the President's New Freedom Commission on Mental Health would be meeting on April 2, 2003 at the Westin Embassy Row, 2100 Massachusetts Avenue, NW., Washington, DC 20008. The date and time of this meeting has subsequently changed to April 3, 2003, 8:30 a.m. to 4 p.m. The agenda of the meeting and contact for additional information remain as announced.

Dated: March 18, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–6893 Filed 3–20–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–13]

Notice of Submission of Proposed Information Collection to OMB for Emergency Processing; Quality Control for Rental Assistance Subsidy Determination; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below

has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren_Wittenberg@omb.eop.gov;* fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, a proposed reinstatement with change of a previously approved information collection.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Quality Control for Rental Assistance Subsidy Determination.

Description of Information Collection: Information is to be collected on a sample of households receiving HUD housing assistance subsidies. These households are interviewed and their incomes verified to determine if subsidies are correctly calculated. The study identifies the costs and types of errors. The results are used to target corrective actions and measure the impact of past corrective actions.

OMB Control Number: 2528–0203.

Agency Form Numbers: None.

Members of Affected Public: Not-for-profit institutions, State, Local or Tribal Government, Business or other for-profit, Individuals or Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 28,220, number of respondents is 400, frequency response is 4 per annum, and the total hours per respondent is 100.5.

Status: Reinstatement of previously approved information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 14, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–6743 Filed 3–20–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–03]

Notice of Proposed Information Collection: Comment Request, Continuum of Care Homeless Assistance Application

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sheila Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Alma Thomas, 202–708–2140 x4470, for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Application.

OMB Control Number, if applicable: 2506–0112.

Description of the need for the information and proposed use: Information to be used in the rating, ranking and selection of proposals submitted to HUD by State and local governments, public housing authorities, and nonprofit organizations for awarded funds under the Continuum of Care Homeless Assistance programs.

Members of affected public: Eligible applicants interested in applying for Continuum of Care Homeless Assistance funds.

Estimation of the total number of hours needed to prepare the inforamtion collection including number of respondents, frequency of response, and hours of response: 121,000.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 17, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–6860 Filed 3–20–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–03]

Notice of Proposed Information Collection for Public Comments for the Indian Community Development Block Grant (ICDBG) Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 19, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Indian Community Development Block Grant Program (ICDBG).

OMB Control Number: 2577–0191.

Description of the need for the information and proposed use: The Indian Community Development Block Grant Program for Indian tribes and Alaska Native villages requires eligible applicants to submit information to enable HUD to select the best projects for funding during annual competitions. HUD uses the information to determine whether applications meet minimum screening eligibility requirements and application submission requirements. They provide general information about the project and are preliminary to the review of the applicant's response to the criteria for rating the application. The information is collected at the time of grant application and is required to identify the applicant, describe the project, and comply with requirements of law or regulation. Additionally, the requirements are essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars.

Agency form numbers, if applicable: Form HUD–4123; HUD–4125 and HUD–4126.

Members of affected public: Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 220 respondents based on the Department's prior competition experience for this program, once each time the applicant decides to compete, an average of 3 hours per application, for a total reporting burden of 660 hours.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Cost Summary

Indian Community Development Block Grant (ICDBG)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0191
(exp. 5/31/2003)

See Instructions and Public Reporting Statement on back.

1. Name of Applicant (as shown in Item 5, Standard Form 424)	2. Application/Grant Number (to be assigned by HUD upon submission)

3. ☐ **Original** (check here if this is the first submission to HUD) ☐ **Revision** (check here if submitted with implementation schedule as part of pre-award requirements ☐ **Amendment** (check here if submitted after HUD approval of grant)	Date (mm/dd/yyyy)

4. **Project Name & Project Category** (see instructions on back) a	**ICDBG** Amount Requested for each activity b	**Program Funds** (in thousands of $) **Other** Other Source Amount for each activity c	**Other** Source of Other Funds for each activity d
	$	$	
5. **Administration** a. General Management and Oversight			
b. Indirect Costs: Enter indirect costs to be charged to the program pursuant to a cost allocation plan.			
c. Audit: Enter estimated cost of Program share of A-133 audits.			
Administration Total *			
6. **Planning** The Project description must address the proposed use of these funds.			
7. **Technical Assistance** Enter total amount of ICDBG funds requested for technical assistance. **			
8. **Sub Total** Enter totals of columns b. and c.	$	$	
9. **Grand Total** Enter sum of column b. plus column c.			$

* The total of items 5 and 6 cannot exceed 20% of the total ICDBG funds requested.

** No more than 10% of ICDBG funds requested may be used for technical assistance. If funds are requested under this line item, a separate project description must accompany the application to describe the technical assistance the application intends to obtain. Only technical assistance costs associated with the development of a capacity to undertake a specific funded program activity are eligible (24 CFR 1003.206).

Instructions for Item 4.
Project Name and Project Type

Participants enter the project name and the name of one of the following three categories of activities:

- Housing
- Community Facilities
- Economic Development

Also enter the component name if applicable. Use a separate Cost Summary sheet (form HUD-4123) for each project included in the application.
Examples of categories and/or components including examples of eligible activities are listed below.

Housing

Rehabilitation Component
- Rehabilitation
- Demolition

Land to Support New Housing Component

New Housing Construction Component

Community Facilitites

Infrastructure Component
- Water
- Sewer
- Roads and Streets
- Storm Sewers

Buildings Component
- Health Clinic
- Daycare Center
- Community Center
- Multi-purpose Center

Economic Development
- Commercial (wholesale, retail)
- Industrial
- Motel/Hotel
- Restaurant
- Agricultural Development

Implementation Schedule

Indian Community Development Block Grant (ICDBG)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0191
(exp. 5/31/2003)

See Instructions and Public Reporting Statement on back.
Submit a separate implementation schedule for each project category.

1. Name of Applicant (as shown in Item 5, Standard Form 424)	2. Application/Grant Number (to be assigned by HUD)	3. ☐ Original (First submission to HUD) ☐ Pre-Award Submission ☐ Amendment (submitted after grant approval)	Date (mm/dd/yyyy)

4. Name of Project (as shown on form HUD-4123, item 4)	5. Effective Date (mm/dd/yyyy)	Expected Completion Date (mm/dd/yyyy)	Expected Closeout Date (mm/dd/yyyy)

6. Environmental Review Status

☐ **Exempt** (As described in 24 CFR 58.34)
☐ **Under Review** (Review underway; findings not yet made)
☐ **Finding of No Significant Impact** (Finding made that request for release of funds for project is not an action which may significantly affect the environment.)
☐ **EIS Required** (Finding that project may significantly affect environment or EIS automatically required by 24 CFR 58.37)
☐ **Not Started** (Review not yet begun)
☐ **Certification** (Environmental review completed; certification and request for release of funds being prepared for submission.)
☐ **Categorically Excluded** (as described in 24 CFR 58.35)

7. Tribal Fiscal Year (mm/dd/yyyy)

8. Task List (List tasks such as environmental assessment, acquisition, etc.)	9. Schedule. Use Calendar Year (CY) quarters. Fill-in the CY below. See detailed instructions on back.								
	CY _____				CY _____				Date (mm/dd/yyyy)
	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	5th Qtr.	6th Qtr.	7th Qtr.	8th Qtr.	(If exceeds 8th Quarter)
10. **Planned Drawdowns by Quarter** (Enter amounts non-cumulatively)	$	$	$	$	$	$	$	$	$Total
11. **Cumulative Drawdown** (If more than one page, enter total on last page only)	$	$	$	$	$	$	$	$	$Total

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0191), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information requires that each eligible applicant submit information to enable HUD to select the best projects for funding during annual competitions for the ICDBG Program. The information will be used by HUD to determine whether applications meet minimum screening eligibility requirements and application submission requirements. Applicants provide general information about the project which is preliminary to the review of the applicant's response to the criteria for rating the application. The information is essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars. Responses to the collection are required by Section 105 of the Department of Housing and Urban Development Reform Act (P.L. 101-235) as amended by the Cranston-Gonzales National Affordable Housing Act of 1990. The information requested does not lend itself to confidentiality.

Instructions for Item 9 Schedule: Use Calendar Year (CY) quarters. Fill-in the CY below. If the project begins in May, for example, enter under "1st Qtr.", A(April), M(May), J(June). Indicate time period required to complete each activity, e.g., acquisition, by entering "X" under the months it will begin and end. Draw a horizontal line from the first to the second "X". If the completion date will extend beyond the 8th quarter, enter date in the far right column and attach an explanation.

Certifications

Indian Community Development Block Grant (ICDBG)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0191
(exp. 5/31/2003)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information requires that each eligible applicant submit information to enable HUD to select the best projects for funding during annual competitions for the ICDBG Program. The information will be used by HUD to determine whether applications meet minimum screening eligibility requirements and application submission requirements. Applicants provide general information about the project which is preliminary to the review of the applicant's response to the criteria for rating the application. The information is essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars. Responses to the collection are required by Section 105 of the Department of Housing and Urban Development Reform Act (P.L. 101-235) as amended by the Cranston-Gonzales National Affordable Housing Act of I990. The information requested does not lend itself to confidentiality.

The grantee hereby certifies and assures that it will comply with the regulations, guidelines, and requirements with respect to the acceptance and use of Federal funds for this Federally-assisted program. Also, the grantee gives assurances and certifies with respect to the grant that:

A. It possesses the legal authority to apply for the grant and execute the proposed program.

B. The governing body has duly authorized the filing of the application, including all understandings and assurances contained in the application and has directed and authorized the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

C. It will comply with the HUD general administration requirements in 24 CFR Part 85.

D. It will comply with the requirements of Title II of Public Law 90-284 (25 USC 1301) (the Indian Civil Rights Act).

E. It will comply with the Indian preference provisions required in 24 CFR 1003.510.

F. It will establish written safeguards to prevent employees from using positions funded under the ICDBG programs for a purpose that is, or gives the appearance of being, motivated by private gain for themselves, their immediate family or business associates. Nothing in this certification should be construed as to limit employees from benefiting from program activities for which they would otherwise be eligible.

G. It will give HUD and the Comptroller General access and right to examine all books, records, papers, or documents related to the grant for a period of not less than three years after program completion or until resolution of any final audit findings.

H. Neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24.

I. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of 24 CFR 1003.602.

J. The chief executive officer or other official of the applicant approved by HUD:

1. Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of the Act apply to the applicant's proposed program pursuant to 24 CFR 1003.605.

2. Is authorized and consents on behalf of the applicant and him/her self to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such an official.

Note: Applicants for whom HUD has approved a claim of incapacity to accept the responsibilities of the Federal government for purposes of complying with the environmental review requirements of 24 CFR part 58 pursuant to 24 CFR 1003.605 need not include the provision of paragraph J in their assurance.

K. It will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 and the regulations in 24 CFR part 135 (Economic Opportunities for Low and Very Low Income Persons) to the maximum extent consistent with, but not in derogation of, compliance with Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC. 450e(b)).

L. It will comply with the requirements of the Fire Authorization Administration Act of 1992 (Pub.L. 102-522).

M. It will provide the drug-free workplace required by 24 CFR part 24, subpart F.

N. It will comply with 24 CFR, part 4, subpart A, showing full disclosure of all benefits of the project as collected by Form HUD-2880, Applicant/Recipient Disclosure Report.

O. Prior to submission of its application to HUD, the grantee has met the citizen participation requirements which includes following traditional means of member involvement, as required in 24 CFR 1003.604.

P. It will administer and enforce the labor standard requirements prescribed in 24 CFR 1003.603.

Q. The Program has been developed so that not less than 70 percent of the funds received under this grant will be used for activities that benefit low- and moderate-income persons.

Note: Applicants receiving Imminent Threat Grants need not include the provision of this paragraph in their assurance

Name (type or print)	Title
Signature	Date (mm/dd/yyyy)

Previous editions are obsolete

form **HUD-4126** (12/98)

[FR Doc. 03–6861 Filed 3–20–03; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4819–N–01]

Notice of Proposed Information Collection: Study of the Primary Prevention Effectiveness of the Milwaukee Lead Hazard Control Ordinance

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail N. Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dr. Peter Ashley, 202–755–1785 ext. 115 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title of Proposal: Study of the Effectiveness of Program Implementation of the Milwaukee Lead Hazard Control Ordinance.

OMB Control Number: 2539–0017.

Need for the Information and Proposed Use: Despite dramatic reductions in blood-lead levels over the pass 15 years, lead poisoning continues to be significant health risk for young children. The Third National Health and Nutrition Examination Survey suggests that the greatest risk exists for children under the age of two. The development of a viable national strategy for the primary prevention of lead poisoning in these young children is a difficult task. The City of Milwaukee has enacted an ordinance requiring owners of pre-1950 rental properties in two target neighborhoods to carry out specified essential maintenance practices and standard treatments by April 30, 2000. The purpose of this information collection activity is to evaluate the feasibility, costs, and effectiveness (in terms of reducing residential dust-lead levels and preventing elevated blood-lead levels in children under two years of age) of the comprehensive primary prevention program being conducted in the two target Milwaukee neighborhoods. The collection information will be used as vital input for developing a viable national strategy for the primary prevention of childhood lead poisoning.

This information collection will involve conducting brief on-site interviews of tenants, conducting visual inspections of rental units, collecting dust-wipe samples for lead analysis from selected floor and window sill locations, and obtaining bold-samples from study subjects. If appropriate, the results of this information collection will be used to improve existing HUD guidance for primary prevention lead-hazard control activities.

Agency Form Numbers: Not applicable.

Members of Affected Public: Selected residents of study neighborhoods within the City of Milwaukee.

Total Burden Estimate (First Year):

Task	Number of respondents	Frequency of responses	Total hours of responses
Respondents	320	4	640
Total Estimated Burden Hours			640

Status of the Proposed Information Collection: Extensions of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 13, 2003.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–6862 Filed 3–20–03; 8:45 am]
BILLING CODE 4210–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–11]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St., SW., Room B133–P3214, Washington, DC 20410; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing- or speech-impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in

the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999, notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the thirteenth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are: (1) Those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender; and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if: (1) the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12; (2) there has been no Origination Approval Agreement for at least six months; and (3) the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
American Capital Mortgage Bankers LTD.	1981 Marcus Ave Ste C112, Lake Success, NY 11042.	New York, NY	01/09/2003	Philadelphia.
American International Mortgage Bankers Inc..	2001 Marcus Ave Ste S168, Lake Success, NY 11042.	New York, NY	01/09/2003	Philadelphia.
Automated Financial Services	5500 S Redwood Road Ste 201, Salt Lake City, UT 84123.	Salt Lake City, UT	01/09/2003	Denver.
Century Funding LTD	4128 Steve Reynolds Blvd, Norcross, GA 30093.	Atlanta, GA	01/09/2003	Atlanta.
Cornerstone Mortgage Group LTD	1055 East Tropicana Ste 425, Las Vegas, NV 89119.	Las Vegas, NV	01/10/2003	Santa Ana.
Discover Mortgage Inc	5736 Osuna NE 9, Albuquerque, NM 87109.	New Mexico, NM	01/09/2003	Denver.
Encore Mortgage Service	1010 Laurel Oak Corp Ctr 301, Voorhees, NJ 08043.	Camden, NJ	01/10/2003	Philadelphia.
Hennessy Mortgage Group Inc	904 N Crowley Road Ste D, Crowley, TX 76036.	Fort Worth, TX	01/09/2003	Denver.
Home Mortgage Inc	7200 W 13TH Ste 4, Wichita, KS 67212.	Topeka, KS	01/10/2003	Denver.
Southern Finance Mortgage Corp	10251 Sunset Drive Ste 103, Miami, FL 33173.	Florida State, FL	01/13/2003	Atlanta.
US Mortgage Finance Corp	602 Chadds Ford Ave, Chadds Ford, PA 19317.	Philadelphia, PA	11/17/2002	Philadelphia.
White Oak Mortgage Group LLC	7101 Creedmoor Rd, Ste 101, Raleigh, NC 27613.	Richmond, VA	11/17/2002	Philadelphia.

Dated: Dated: March 12, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–6744 Filed 3–20–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To Delist *Tuctoria mucronata* (Solano grass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to remove *Tuctoria mucronata* (Solano grass), throughout its range, from the Federal list of threatened and endangered species, pursuant to the Endangered Species Act of 1973, as amended (ESA). We reviewed the petition and supporting documentation, information in our files, and other available information, and find that there is not substantial information indicating that delisting of *T. mucronata* may be warranted. We will not be initiating a further status review in response to the petition to delist. We ask the public to submit to us any new information that becomes available concerning the status of this species. This information will help us monitor and encourage the conservation of this species.

DATES: The finding announced in this document was made on February 5, 2003. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: Data, information, written comments and materials, or questions concerning this petition and finding should be submitted to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. The petition finding and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller, Botanist, at the above address, or telephone 916/414–6645.

SUPPLEMENTARY INFORMATION:

Background

We listed *Tuctoria mucronata* as an endangered species in 1978 (43 FR 44810). At the time, *T. macronata* was known to exist only as a single population found at its type locality (the location where it was first discovered) at Olcott Lake, in Solano County, CA. We proposed critical habitat for *T. mucronata,* and 10 other vernal pool plant species, on September 24, 2002 (67 FR 59884). *Tuctoria mucronata* is an obligate vernal pool annual species.

The petition to delist *Tuctoria mucronata,* dated February 3, 1997, was submitted by Rob Gordon, representing the National Wilderness Institute. The petition requested we remove *T. mucronata* from the List of Endangered and Threatened Wildlife and Plants based upon data error.

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We base the finding on all information available to us at the time the finding is made. To the maximum extent practicable, we make this finding within 90 days of receipt of the petition, and promptly publish notice of the finding in the **Federal Register**. If we find that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated (50 CFR 424.14).

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

In response to the petitioner's request to delist *Tuctoria mucronata,* we sent a letter to the petitioner on June 29, 1998, explaining our inability to act upon the petition due to low priorities assigned to delisting petitions in accordance with our Listing Priority Guidance for Fiscal Year 1997, which was published in the **Federal Register** on December 5, 1996 (61 FR 64475). That guidance identified delisting activities as the lowest priority (Tier 4). Due to the large number of higher priority listing actions and a limited listing budget, we did not conduct any delisting activities during the Fiscal Year 1997. On May 8, 1998, we published the Listing Priority Guidance for Fiscal Years 1998–1999 in the **Federal Register** (63 FR 25502) and, again, placed delisting activities at the bottom of our priority list. Since 1998, higher priority work has not allowed us to examine or act upon the petition to delist *T. mucronata.*

Discussion

The petition cited our 1993 Fiscal Year Budget Justification as its supporting information that the species should be removed from the List of Endangered and Threatened Wildlife and Plants based on data error. The 1993 Fiscal Year Budget Justification stated that we would evaluate those species identified as approaching the majority of their recovery objectives. *Tuctoria mucronata* was identified as one of 33 species approaching its recovery objectives, as found in our December 1990 Report to Congress: Endangered and Threatened Species Recovery Program. The 1993 Fiscal Year Budget Justification identified the need to evaluate those species, including *T. mucronata,* and determine the appropriateness of delisting them based on status surveys.

Our Delta Green Ground Beetle and Solano Grass Recovery Plan (Service 1985) states that recovery will be achieved by protecting the known population of the species and by establishing three additional, secure populations within the two protected large vernal lakes and their watersheds in the vicinity of the Jepson Prairie Preserve. Recovery would be achieved when these populations are secure and sustainable for a period of 15 consecutive years. Given that *Tuctoria mucronata* was last seen in 1993 at its original location when four individual plants were present, we are concerned that the population is possibly extirpated from its type locality. A second population of *T. mucronata* was discovered on private lands in 1985, and another population of *T. mucronata* was discovered in 1993 on a former U.S. Air Force Base communication facility that is being transferred to the Yolo County Parks Department. Several thousand individual plants of *T. mucronata* were seen at this site in 2000. We do not have sufficient additional populations protected in enough preserves specifically established for protection and management of the species or protected under conservation easements and managed for the conservation of the species to meet our recovery objectives.

The petitioner also stated that ''other new scientific information gathered since the time of listing which is in possession of the Service,'' supports delisting due to data error. However, the petition did not identify this new scientific information. In addition, the

petitioner did not include any detailed narrative justification for the delisting or provide information regarding the status of the species over all or a significant portion of its range or include any persuasive supporting documentation for the recommended administrative measure to delist *Tuctoria mucronata.* While we have identified two additional populations since we listed the species, these two populations do not meet the recovery plan criteria for downlisting or delisting; in addition, the original population appears to be extirpated. We have found no evidence or data in our files or in the petition that indicates a data error was committed in listing *T. mucronata* or that otherwise supports the petitioned action.

Threats to *Tuctoria mucronata* include alteration of hydrology, excessive livestock grazing, recreational uses, and competition from non-native plants (California Natural Diversity Database 2002). As of 1999, the status of *T. mucronata* is declining (California Department of Fish and Game 2001). Thus, we do not possess any data that suggest *T. mucronata* was listed in error, and the species has not achieved sufficient recovery objectives to be considered for either downlisting to threatened status or delisting.

Finding

We have reviewed the petition and its supporting documentation, information in our files, and other available information. We find that there is not substantial information indicating that delisting of *Tuctoria mucronata* may be warranted.

Information Solicited

When we find that there is not substantial information indicating that the petitioned action may be warranted, initiation of a status review is not required by the ESA. However, we regularly assess the status of species listed as threatened or endangered and welcome any information concerning the status of *Tuctoria mucronata.* Submit any information at any time to the Field Supervisor, Sacramento Fish and Wildlife Office (*see* **ADDRESSES**).

References Cited

California Department of Fish and Game. 2001. The Status of Rare, Threatened and Endangered Animals and Plants of California. 226 pp

California Natural Diversity Database. 2002. An electronic database hosted by the California Department of Fish and Game, Habitat Conservation Division, Sacramento California

U.S. Fish and Wildlife Service. 1985. Delta Green Ground Beetle and Solano Grass Recovery Plan. U.S. Fish and Wildlife Service, Portland, Oregon. 68 pp.

Author

The primary author of this document is Ken Fuller, Botanist, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 5, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–6793 Filed 3–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Low Effect Habitat Conservation Plan for the Folsom Professional Centre, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Catlin Folsom Crossing, L.P. (the ''applicant'') has applied to the Fish and Wildlife Service (Service) for a 3-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the threatened valley elderberry longhorn beetle (*Desmoncerus californicus dimorphus*) (beetle) associated with construction of a two-story office condominium building within a 5.59-acre undeveloped parcel located on Blue Ravine Road, in Folsom, Sacramento County, California. This project is known as the Folsom Professional Centre. A conservation program to minimize and mitigate for the project activities would be implemented as described in the Folsom Professional Centre Low Effect Habitat Conservation Plan (Plan), which would be implemented by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the Plan qualifies as a ''Low-effect'' Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS), which is also available for public review.

DATES: Written comments should be received on or before April 21, 2003.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6711.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief, Conservation Planning Division, Sacramento Fish and Wildlife Office; telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION

Availability of Documents

Individuals wishing copies of the application, Plan, and EAS should immediately contact the Service by telephone at (916) 414–6600 or by letter to the Sacramento Fish and Wildlife Office. Copies of the Plan, and EAS also are available for public inspection, during regular business hours, at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**); Catlin Properties, 3620 Fair Oaks Blvd., Suite 150, Sacramento, California 95864; and City of Folsom, Planning, Zoning, and Development Department, 50 Natomas Street, Folsom, California 95630–2696.

Background Information

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant is seeking a permit for take of the beetle during the life of the permit. This species is referred to as the ''covered species'' in the Plan.

The project encompasses construction of a two-story office building and parking lot on the 5.59-acre project site. The building would consist of individual condominium office units. The resident elderberry shrubs would be removed to accommodate the new office building and parking lot. The project

site contains habitat (*e.g.*, elderberry shrubs) for the beetle. Construction of the proposed project would result in the removal of 6 elderberry shrubs, with 24 stems greater than 1-inch diameter at ground level, which have been determined to be habitat for the beetle. One beetle exit hole was found in these six shrubs. The project site does not contain any other rare, threatened, or endangered species or habitat. No critical habitat for any listed species occurs on the project site.

The applicant proposes to minimize and mitigate the effects to the covered species associated with the covered activities by fully implementing their Plan. The purpose of the Plan's conservation program is to promote the biological conservation of the covered species, the beetle. The applicant will minimize and mitigate the impacts of taking the beetle by transplanting the six elderberry shrubs that are currently on the construction site, and purchasing between 6 to 20 credits at a Service approved Conservation Bank. Each credit includes an established ratio of elderberry seedlings and native riparian plant seedlings. The number of credits purchased will be based upon the date that the applicant would transplant the six elderberry shrubs to the Conservation Bank. Transplanting outside of the dormant period for elderberry shrubs, November 16th to February 15th, would increase impacts to the beetle. The adult beetles and larvae have a greater likelihood of being killed or injured as a result of the elderberry shrubs increased risk of mortality due to transplanting during the active growing season. Therefore, if the elderberry shrubs are transplanted during the active growing season, the number of credits purchased by the applicant would be toward the higher end of the 6 to 20 credit range.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan, which includes measures to minimize and mitigate impacts of the project on the beetle. Two alternatives to the taking of listed species under the Proposed Action are considered in the Plan. Under the No Action Alternative, no permit would be issued and the office building and parking lot would not be built. Under the Reduced Take Alternative, the office building and parking lot would be built but the size and scope would be reduced and fewer elderberry shrubs would be transplanted.

We have made a preliminary determination that the Plan qualifies as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our EAS, the Plan qualifies as a ''low-effect'' plan for the following reasons:

1. Approval of the Plan will result in minor or negligible effects on the beetle and its habitat. We do not anticipate significant direct or cumulative effects to the beetle resulting from development of the Folsom Professional Centre.

2. Approval of the Plan will not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan will not result in any cumulative or growth inducing impacts and, therefore, will not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate any Federal, State, local or tribal laws or requirement imposed for the protection of the environment.

5. Approval of the Plan will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

We are providing this notice pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to Catlin Folsom Crossing, L.P. for the incidental take of the beetle from development of the Folsom Professional Centre. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: March 14, 2003.

Ken McDermond,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–6771 Filed 3–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Document for Kirwin National Wildlife Refuge in North-central Kansas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental document for Kirwin National Wildlife Refuge near Phillipsburg, Kansas. The Service is issuing this notice in compliance with its policy to advise other organizations and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by August 31, 2003.

ADDRESSES: Comments and requests for more information should be sent to: Toni Griffin, Planning Team Leader, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486; Fax (303) 236–4792; e-mail *toni_griffin@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Toni Griffin, Planning Team Leader, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486; Fax (303) 236–4792; e-mail *toni_griffin@fws.gov.*

SUPPLEMENTARY INFORMATION: The Service has initiated comprehensive conservation planning for Kirwin National Wildlife Refuge for the conservation and enhancement of its natural resource. This Refuge, consisting of 10,778 acres is located in the rolling hills and narrow valley of the North Fork of the Solomon River in Phillips county, Kansas.

Kirwin National Refuge was established in 1954 as an overlay project

on a Bureau of Reclamation irrigation and flood control reservoir. ''* * * shall be administered by him (Secretary of the Interior) directly or in accordance with cooperative agreements * * * and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon, * * *.'' 16 U.S.C. 715d (Fish and Wildlife Coordination Act). During the comprehensive planning process, management goals, objectives, and strategies will be developed to carry out the purpose of the Refuge and to comply with laws and policies governing refuge management and public use of refuges. Kirwin National Wildlife Refuge is open to public use.

The Service requests input as to which issues affecting management or public use should be addressed during the planning process. The Service is especially interested in receiving public input in the following areas:

—What do you value most about this Refuge?

—What problems or issues do you see affecting management or public use of this Refuge?

—What changes, if any, would you like to see in the management of this Refuge?

The Service has provided the above questions for your optional use. The Service has no requirement that you provide information. The Planning Team developed these questions to facilitate gathering information about individual issues and ideas. Comments received by the Planning Team will be used as part of the planning process.

Opportunities for public input will also be provided at public meetings during the week of May 19, 2003. Exact dates and times for these public meetings are yet to be determined, but will be announced via local media.

All information provided voluntarily by mail, phone, or at public meetings (*e.g.*, names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: March 3, 2003.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 03–6783 Filed 3–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(WY–060–1320–EL), WYW151634]

Notice of availability of West Hay Creek Coal Draft Environmental Impact Statement and Federal Coal Notice of Hearing, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of a draft environmental impact statement (DEIS) on a maintenance lease for a Federal coal tract in the decertified Powder River Federal Coal Production Region, Wyoming, and notice of public hearing.

SUMMARY: Under the National Environmental Policy Act (NEPA) and the implementing regulations, the Bureau of Land Management (BLM) announces the availability of the West Hay Creek Coal DEIS and announces a public hearing pursuant to 43 Code of Federal Regulations (CFR) 3425.4.

The DEIS analyzes and discloses to the public direct, indirect, and cumulative environmental impacts of issuing a Federal coal lease in the Wyoming portion of the Powder River Basin. The BLM is considering a coal lease issuance as a result of an August 31, 2000 application made by Triton Coal Company, LLC to lease approximately 838 acres (approximately about 130 million in-place tons of coal) of Federal coal near the Buckskin Mine in Campbell County, Wyoming.

The purpose of the public hearing is to solicit comments on the DEIS on the proposed competitive sale of the Federal coal in the West Hay Creek Coal tract, and on the fair market value and maximum economic recovery of the Federal coal.

DATES: Written comments on the DEIS will be accepted for 60 days following the date that the Environmental Protection Agency (EPA) publishes their NOA of the DEIS in the **Federal Register**. The public hearing will be held at 7 p.m. MST, on April 16, 2003, at the Clarion Hotel, 2009 South Douglas Highway, Gillette, Wyoming. Requests to be included on the mailing list and to receive copies of the DEIS and notification of the comment period and hearing date should be sent to the address, facsimile number, or electronic address listed below.

The BLM asks that those submitting comments on the DEIS make them as specific as possible with reference to page numbers and chapters of the document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the BLM decision-making process.

ADDRESSES: Please address questions, comments, or concerns to the Casper Field Office, Bureau of Land Management, Attn: Patricia Karbs, 2987 Prospector Drive, Casper, Wyoming 82604, fax them to 307–261–7587, or send e-mail comments to the attention of Patricia Karbs at *casper_wymail@blm.gov.* A copy of the DEIS has been sent to affected Federal, State, and local Government agencies; persons, and entities identified as potentially being affected by a decision to lease the Federal coal in this tract; and persons who indicated to the BLM that they wished to receive a copy of the DEIS. Copies of the DEIS are available for public inspection at the following BLM office locations: BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; and BLM Casper Field Office, 2987 Prospector Lane, Casper, Wyoming 82604. Comments, including names and street addresses of respondents, will be available for public review at the Casper Field Office at the address listed above during regular business hours (7:45 a.m. through 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Patricia Karbs or Mike Karbs at the above address, or telephone: 307–261–7600.

SUPPLEMENTARY INFORMATION: On August 31, 2000, Triton Coal Company, LLC, (Triton) filed a coal lease application for a maintenance tract containing approximately 130 million tons of Federal coal covering approximately 838 acres. Triton, the operator of the Buckskin Mine approximately 12 miles

north of Gillette, Wyoming, applied to lease the tract as a maintenance tract to extend the life of their existing mining operations under the provisions of the Leasing on Application regulations at 43 CFR 3425. This tract, case number WYW151634, is referred to as the West Hay Creek Coal tract.

On November 5, 2001, BLM received a request from Triton to modify the West Hay Creek Coal tract. The following lands in Campbell County, Wyoming are included in the tract as currently filed:

Sixth Principal Meridian, Wyoming

T. 52 N., R. 72 W.
Sec. 17, lot:
5(S½S½)—10.265 acres
6(S½S½)—10.265 acres
7(S½S½)—10.3475 acres
8(S½S½)—10.3475 acres
9—41.32 acres
10—41.32 acres
11—41.12 acres
12—41.12 acres
13—41.18 acres
14—41.18 acres
Sec. 18, lot:
13(E½)—21.035 acres
20(E½)—20.75 acres
Sec. 19, lot:
5(E½)—20.71 acres
12(E½)—20.84 acres
13(E½)—20.935 acres
20(E½) 21.065 acres
Sec. 20, lot:
2(W½,W½E½) 31.1175 acres
3—41.39 acres
4—41.28 acres
5—41.30 acres
6—41.41 acres
7(W½,W½E½)—31.1325 acres
10(W½,W½E½)—31.1475 acres
11—41.42 acres
12—41.32 acres
13—41.34 acres
14—41.44 acres
Total Acres: 838.0975

The tract as currently filed includes an estimated 130 million tons of in-place coal.

The Buckskin Mine is adjacent to the lease application area and has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality (DEQ). The Mine has an approved air quality permit from the Air Quality Division of the Wyoming DEQ to mine up to 27.5 million tons of coal per year.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of the DEIS. If the tract is leased as a maintenance tract, the new lease will be incorporated into the existing mining and reclamation plan for the adjacent mine. The Secretary of the Interior must approve the revision to the MLA (Mineral Leasing Act) mining plan before the Federal coal can be mined. If the tract is leased, OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior.

The DEIS analyzes leasing the tract as applied for as described above as a separate Proposed Action. As part of the coal leasing process, BLM has identified and is evaluating other tract configurations which add, or subtract, Federal coal to avoid bypassing coal or to prompt competitive interest in the unleased Federal coal in this area. The tract configuration that BLM has identified is described and analyzed as a separate alternative in the DEIS. The DEIS also analyzes the alternative of rejecting the application to lease Federal coal as the No Action Alternative. The other two alternatives evaluate alternate tract configurations considered by BLM. Under these alternatives, a competitive sale would be held and a lease issued for Federal coal lands included in a tract modified by the BLM.

The Proposed Action and Alternatives being considered in the DEIS are in conformance with the ''Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office'' (April 2001), the USDA Forest Service ''Final EIS for the Northern Great Plains Management Plans Revision'' (May 2001) and the BLM ''Platte River Resource Area Resource Management Plan'' (1985).

Dated: January 17, 2003.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 03–5888 Filed 3–20–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–6332–DQ; HAG–02–0284]

Notice of Availability of the Proposed Hellgate Recreation Area Management Plan/Final Environmental Impact Statement (FEIS) for the 27-Mile Section of the Rogue National Wild and Scenic River (From the Mouth of the Applegate River to Grave Creek)

AGENCY: Bureau of Land Management, Medford District Office, Grants Pass Resource Area.

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, a Recreation Area Management Plan and FEIS have been completed for a portion of the Medford District. The FEIS describes and analyzes future options for managing the 27-mile section of the Rogue National Wild and Scenic River (from the mouth of the Applegate River to Grave Creek) in southern Josephine County, Oregon.

The Rogue River was one of eight rivers identified as part of the National Wild and Scenic Rivers System when the Wild and Scenic Rivers Act was passed in 1968. Designated rivers are classified as wild, scenic, or recreational. The 27-mile stretch of the Rogue National Wild and Scenic River Hellgate Recreation Area from the confluence of the Applegate River to Grave Creek was classified as a recreational river.

The need for action is based on BLM visitor use reports that show increases in water-based visitor use activities, a recreation use study, and public scoping efforts, which identified visitor use conflicts, particularly between jet boaters and floaters during the summer months and between jet boaters and anglers during the fall fishing season. The purpose of the action is to: (1) Replace the 1978 Rogue National Wild and Scenic River Activity Plan for the Hellgate Recreation Section of the Rogue National Wild and Scenic River, (2) provide management direction and guidance on the management of the Hellgate section pursuant to the Wild and Scenic Rivers Act (Public Law 90–542, October 2, 1968, (3) conform with management direction contained in the 1995 Medford District Record of Decision and Resource Management Plan, and (4) maintain a mix of river recreation uses and users common to the river since its designation in 1968 as a National Wild and Scenic river.

The FEIS analyzes five alternatives ranging from fewer watercraft and less visitor use to maximum watercraft and visitor use. The Proposed Action (Alternative E) manages the level of recreational use while protecting the environment and the outstandingly remarkable values. The Proposed Action minimizes potential impacts to the fisheries resource and increases fishing opportunities. The Proposed Action also maximizes floating opportunities. Except for commercial motorized tour boats, commercial motorized angling boats, and special boating events, overall recreational use levels would be unregulated and continue to increase until the use limit is reached. The number of permits for commercial motorized tour boats, commercial motorized angling boats, and special boating events is unchanged from the

current level, however, limited changes are recommended to reduce visitor use conflicts.

DATES: Release of the FEIS initiates a 30-day review period.

ADDRESSES: Comments should be addressed to Chris Dent, Rogue River Manager, Grants Pass Resource Area, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. Individual copies of the FEIS may be obtained by contacting the Planning Team Leader, Cori Cooper, at (541) 618–2428.

Comments, including names and addresses, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law.

Dated: November 13, 2002.

Lynda L. Boody,

Acting, District Manager, BLM Medford District Office.

[FR Doc. 03–5302 Filed 3–20–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA–668–03–1610–DP]

Notice of Availability of Santa Rosa and San Jacinto Mountains National Monument Draft Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior and Forest Service, Department of Agriculture.

ACTION: Notice of availability of Santa Rosa and San Jacinto Mountains National Monument draft resource management plan and draft environmental impact statement.

SUMMARY: In compliance with Bureau of Land Management (BLM) planning regulations, title 43 Code of Federal Regulations (CFR) 1610.2(f)(3) and title 40 CFR 1502.9(a), the BLM and Forest Service (FS) hereby gives notice that the Draft Santa Rosa and San Jacinto Mountains National Monument Management Plan, and Draft Environmental Impact Statement (EIS) is available for public review and comment. The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land.

DATES: Written comments on the Draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through local media.

ADDRESSES: Written comments may be mailed to Danella George, Monument Manager, Santa Rosa and San Jacinto Mountains National Monument Management Plan, Palm Springs-South Coast Field Office, P.O. Box 581260, 690 W. Garnet Avenue, North Palm Springs, CA 92258. You may also comment via the Internet to *ca_srsj_nm@ca.blm.gov.* Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include in the subject line: ''National Monument Management Plan and EIS'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Connell Dunning at (760) 251–4817. Finally, you may hand-deliver comments to the address listed above. Oral comments will be accepted and recorded at any of three public meetings to be held during the month of March or April, 2003. Please contact Connell Dunning at (760) 251–4817 or *cdunning@ca.blm.gov* for further information as to exact dates, place and time. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Connell Dunning at (760) 251–4817 or *cdunning@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: A copy of the Draft Santa Rosa and San Jacinto Mountains National Monument Management Plan, and Draft Environmental Impact Statement is available for review via the internet at *http://www.ca.blm.gov/palmsprings.* Electronic (on CD–ROM) and paper copies may also be obtained by contacting Connell Dunning at the aforementioned addresses and phone number. This draft Santa Rosa and San Jacinto Mountains National Monument Management Plan is being developed cooperatively between BLM and FS. The draft plan includes strategies for protecting and preserving the biological, cultural, recreational, geological, educational, scientific, and scenic values that the Monument was established to protect. The preferred alternative supports the protection and preservation of the above values and includes efforts to achieve consistency between Forest Service and BLM as well as with other land managing agencies within the boundary of the Monument. The range of alternatives in this draft plan does not reevaluate planning decisions recently brought forward through the BLM Coachella Valley California Desert Conservation Area Plan Amendment or items being addressed through the Forest Service San Bernardino National Forest Plan Revision. Records of Decision will be prepared by the BLM and FS for the Santa Rosa and San Jacinto Mountains National Monument Management Plan in accordance with planning regulations at 43 CFR 1610 and NEPA. The Santa Rosa and San Jacinto Mountains National Monument was established by Pub. L. 106–351 and will be cooperatively managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other Federal agencies, State agencies and local governments.

Dated: February 5, 2003.

Danella George,

Designated Federal Official, National Monument Manager.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 03–5896 Filed 3–20–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PG; G 03–0116]

Southeast Oregon Resource Advisory Council; Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Vale District.

ACTION: Meeting notice for the Southeast Oregon Resource Advisory Council.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will meet at the Summer Lake Inn located on the west shore of Summer Lake in Eastern Oregon, 31501 Highway 31, Summer Lake, Oregon 97640, (800) 261–2778 from 8 a.m. to 5 p.m., Pacific Time PT), on Tuesday, May 27, 2003. On Wednesday, May 28, 2003 there will be a field trip to Christmas Valley to view Off Highway Vehicle (OHV) issues.

The meeting topics that may be discussed by the Council include a discussion of issues within southeast Oregon related to North Lake Recreation Plan, Birch Creek Management Plan, Wildland Fire Board, OHV, Wild Horse & Burro, Rangeland Assessment, Federal officials' updates, and other matters as may reasonably come before the Council. The entire meeting is open to the public. Information to be distributed to the Council members is requested in written format 10 days prior to the Council meeting. Public comment is scheduled for 11:15 a.m. to 11:45 a.m., Pacific Time (PT), on Tuesday, May 27, 2003. For the tour scheduled for Wednesday, May 28, 2003, please contact the BLM office listed below for exact times as the date approaches.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC may be obtained from Peggy Diegan, Management Assistant/ Webmaster, Vale District Office, 100 Oregon Street, Vale, OR 97918 (541) 473–3144, or *Peggy_Diegan@or.blm.gov* and/or from the following Web site <*http://www.or.blm.gov/SEOR-RAC*>.

Dated: March 17, 2003.

David R. Henderson,

District Manager.

[FR Doc. 03–6784 Filed 3–20–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–1610–DP]

West Mojave Planning Area; California Desert Conservation Area Plan and Enviromental Assessment Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of draft amendment to the California Desert Conservation Area (CDCA) Plan and Environmental Assessment (EA) for off-road vehicle designations in West Mojave Planning Area.

SUMMARY: Off-road vehicle designations are being considered by the California Desert District of the Bureau of Land Management (BLM) for the West Mojave Desert Planning Area in accordance with the criteria and procedures of 43 Code of Federal Regulations subpart 8342. These designations, when approved by BLM, will amend the existing designations established under the CDCA plan in the West Mojave Area. This planning area encompasses approximately 3.3 million acres of public land managed by the BLM's California Desert District, located in Inyo, Kern, Los Angeles and San Bernardino Counties in southern California.

DATES: This notice initiates the public review process on the Draft Off-Road Vehicle Designation Plan Amendment and EA. The public is invited to review and comment on the document. The comment period will end 30 days after publication of this notice in the **Federal Register**. Comments on the Draft Plan Amendment should be received on or before the end of the comment period at the address listed below.

Written comments should be sent to the Bureau of Land Management, California Desert District Office, Attn. West Mojave Plan Staff, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553. For comments to be most helpful they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and are feasible to be resolved in this planning process.

Documents pertinent to this proposal may be examined at the BLM California Desert District Office, the BLM Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest, California 93555, and the BLM Barstow Field Office, 2601 Barstow Road, Barstow, California 92311during regular business hours from 7:45 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The West Mojave Off-Road Vehicle Designations would establish a network of motorized vehicle routes that would provide access to more than 3.3 million acres of public lands administered by the BLM within Inyo, Kern, Los Angeles and San Bernardino Counties, all of which are within the State of California. The BLM's Ridgecrest and Barstow field offices administer most of these public lands. A small amount of acreage administered by the BLM's Needles and Palm Springs field offices is also affected. All public lands are within the California Desert Conservation Area, and all lie within the jurisdiction of the BLM's California Desert District.

Motorized vehicle access would be provided for recreational and commercial pursuits, and to enable private property owners to visit their lands. The network was developed with the assistance of the public, and was based upon the results of a comprehensive field inventory that identified the location of routes, type of routes, and destination points. The network is designed to be compatible with the conservation of the desert's natural and cultural resources, including sensitive plants and animals.

The West Mojave Off-Road Vehicle Designations would complement the bioregional conservation strategy that is currently being developed for these same public lands through the West Mojave planning process. A ''West Mojave Plan'' plan is being prepared by the BLM in collaboration with state agencies and local jurisdictions. When completed, it will present strategies for conserving the threatened desert tortoise, the Mohave ground squirrel and nearly 100 other sensitive species,

while providing a streamlined program for compliance with the California and federal endangered species acts. The West Mojave Off-Road Vehicle Designations have been closely coordinated with the preparation of the West Mojave Plan, to ensure that they are mutually compatible. An Environmental Impact Statement for the West Mojave Plan will be available for a 90-day public review during the spring of 2003. The West Mojave Plan EIS will review the impacts of the West Mojave Off-Road Vehicle Designations to ensure that any additional cumulative impacts resulting from the West Mojave Plan are addressed. A final decision regarding the West Mojave Off-Road Vehicle Designations will be made by the end of June 2003.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact William Haigh, Project Manager, at (760) 252–6080 (Phone), e-mail at *whaigh@ca.blm.gov.*

Dated: February 20, 2003.

Linda Hansen,

District Manager, California Desert District.

[FR Doc. 03–6779 Filed 3–20–03; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Review)]

Cut-to-Length Carbon Steel Plate From China, Russia, South Africa, and Ukraine

AGENCY: International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the suspended investigations on carbon steel plate from China, Russia, South Africa, and Ukraine.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether termination of the suspension agreements on cut-to-length (CTL) carbon steel plate [1] from China, Russia, South Africa, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on these matters by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On December 13, 2002, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (67 FR 77803, December 19, 2002). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on June 17, 2003, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on July 8, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 30, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 2, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing

[1] The products covered under the suspension agreements are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, and whether or not painted, varnished, or coated with plastics of other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products, hot-rolled, neither clad, plated, nor coated with metal, and whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—*e.g.*, products which have been bevelled or rounded at the edges. Carbon steel plate is covered by the following statistical reporting numbers of the Harmonized Tariff Schedule of the United States (HTS): 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030 (not in coil form), 7211.24.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Excluded from this definition is grade X–70 plate.

testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is June 26, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 17, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before July 17, 2003. On August 7, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 11, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 17, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6740 Filed 3–20–03; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–468]

Certain Microlithographic Machines and Components Thereof; Notice of Commission Determination Not To Review a Final Initial Determination Finding No Violation of Section 337 Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on January 29, 2003, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation. Accordingly, the Commission has terminated the investigation with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based section 337 investigation on January 24, 2002, based on a complaint filed by the Nikon Corporation of Tokyo, Japan, and Nikon Precision Inc. and Nikon Research Corporation of America of Belmont, California (collectively, ''Nikon''). The respondents named in the investigation were ASM Lithography Holding N.V. and ASM Lithography B.V. of the Netherlands and ASM Lithography, Inc. of Tempe, Arizona (collectively, ''ASML''). The complaint alleged that ASML has violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain microlithographic machines and components thereof by reason of infringement of certain claims of seven U.S. patents: U.S. Patents Nos. 6,008,500 (the '500 patent), 6,271,640 (the '640 patent), 6,255,796 (''the '796 patent''), 6,323,935 (''the '935 patent''), 5,473,410 (''the '410 patent''), 5,638,211 (''the '211 patent''), and 6,233,041(''the '041 patent).

On January 29, 2003, the ALJ issued his final ID finding no violation of section 337 based on his finding that claims 1 and 7 of the '500 patent and claim 1 of the '640 patent are anticipated by the Micrascan machine; claim 30 of the '640 is anticipated by the Doran '242 patent and is not enabled; ASML's Twinscan machine does not infringe claims 1 and 16 of the '796 patent or claims 1, 78, and 84 of the '935 patent, nor do Nikon's domestic machines practice claims 1 of the '796 patent or claim 1 of the '935 patent; claim 1 of the '935 patent is invalid for failure to satisfy the written description requirement and is not enabled under 35 U.S.C. 112, ¶ 1, and is invalid for indefiniteness under 35 U.S.C. 112, ¶ 2; claim 19 of the '410 patent is invalid as obvious and is unenforceable by reason of inequitable conduct; and ASML's Twinscan machine does not infringe any claim at issue of the '211 and '041 patents, nor do Nikon's domestic machines practice any claim of the '211 or '041 patents.

On February 10, 2003, Nikon, ASML, and the Commission investigative attorneys filed petitions for review of the final ID. On February 19, 2003, the parties filed responses to each other's petitions for review.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review (*i.e.*, to adopt) the ID in its entirety, except that it determined to take no position on the ALJ's finding that claim 30 of the '640 patent is anticipated by the Doran '242 patent and his findings on criteria (A) and (B) of the economic prong of the domestic industry requirement under section 337(a)(3) when a domestic product is made partly or wholly abroad.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42 of the Commission's rules of practice and procedure, 19 CFR 210.42.

By order of the Commission.

Issued: March 17, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6854 Filed 3–20–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–432 and 731–TA–1024–1028 (Preliminary)]

Prestressed Concrete Steel Wire Strand From Brazil, India, Korea, Mexico, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a))(the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India of prestressed concrete steel wire strand (''PC strand'') that are alleged to be subsidized by the Government of India and by reason of imports from Brazil, India, Korea, Mexico, and Thailand of PC strand that are alleged to be sold in the United States at less than fair value (LTFV). The subject merchandise is provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States.

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On January 31, 2003, a petition was filed with the Commission and Commerce by American Spring Wire Corp., Bedford Heights, OH; Insteel Wire Products Co., Mt. Airy, NC; and Sumiden Wire Products Corp., Stockton, CA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of PC strand from India and by reason of LTFV imports of PC strand from Brazil, India, Korea, Mexico, and Thailand. Accordingly, effective January 31, 2003, the Commission instituted countervailing duty investigation No. 701–TA–432 and antidumping duty investigations Nos. 731–TA–1024–1028 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 7, 2003 (68 FR 6511). The conference was held in Washington, DC, on February 21, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 17, 2003. The views of the Commission are contained in USITC Publication 3589 (March 2003), entitled Prestressed Concrete Steel Wire Strand from Brazil, India, Korea, Mexico, and Thailand: Investigations Nos. 701–TA–432 and 731–TA–1024–1028 (Preliminary).

Issued: March 17, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6853 Filed 3–20–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation TA–2104–6]

U.S.-Singapore Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: March 3, 2003.

SUMMARY: Following receipt of a request on January 21, 2003, from the United States Trade Representative (USTR), the Commission instituted investigation No. TA–2104–6, U.S.-Singapore Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)).

Background: As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2) of the Trade Act of 2002 (19 U.S.C. 3804(f)(2)) assessing the likely impact of the U.S.-Singapore FTA on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers. Specifically, the report will—

assess the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.

In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and will provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement. Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. The President notified the Congress on January 30, 2003, of his intent to enter into the FTA with Singapore.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained from Diane Manifold, Project Leader, Office of Economics ((202) 205–3271). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel ((202) 205–3091). For media information, contact Peg O'Laughlin ((202) 205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on ((202) 205–1810).

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 24, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 10, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 17, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 1, 2003. In the event that, as of the close of business on April 10, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission ((202) 205–1816) after April 10, 2003, to determine whether the hearing will be held.

Written Submission: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission intends to publish only a public report in this investigation. Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 1, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 68036 (Nov. 8 2002). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at ((202) 205–2000). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

Singapore, tariffs, trade, imports and exports.

Issued: March 17, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6852 Filed 3–20–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 17, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King.Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Unemployment Compensation for Ex-Servicemembers (UCX) Handbook.

OMB Number: 1205–0176.

Affected Public: State, Local, or Tribal Government and Individuals or households.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 53.

Total Annual Responses: 3,306.

Average Response Time: 1 minute for the ETA 843 and 1.5 minutes for the ETA 841.

Total Annual Burden Hours: 55.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $76,348.

Description: Federal Law (5 U.S.C. 8521 *et seq.*) and the Department's regulations at 20 CFR part 614 provides unemployment insurance protection, to former members of the Armed Forces (ex-servicemembers) and is referred to in abbreviated form as ''UCX''.

The forms in the Handbook are used in connection with the provisions of this benefit assistance.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–6795 Filed 3–20–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 17, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or by E-Mail *King.Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Veterans' Employment and Training Service (VETS).

Type of Review: Extension of a currently approved collection.

Title: Federal Contractor Veterans' Employment Report VETS–100.

OMB Number: 1293–0005.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Frequency: Annually.

Number of Respondents: 187,755.

Number of Annual Responses: 187,755.

Estimated Time Per Response: 45 minutes.

Total Burden Hours: 140,816.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Federal Contractor Veterans' Employment Report VETS–100, administered by the U.S. Department of Labor, is used to facilitate Federal contractor and subcontractor reporting of their employment and new hiring activity. Title 38 U.S.C., section 4212 (d) requires the collection of information from entities holding contracts of $25,000 or more with Federal departments or agencies to report annually on (a) the number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era and the number who are other veterans who served on active duty during a war or a campaign or expedition for which a campaign badge has been authorized; (b) the total number of employees hired during the report period and of those, the number of special disabled, the number who are veterans; and the maximum and minimum number of employees employed by the contractor at each hiring location.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–6796 Filed 3–20–03; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. D–11062, et al.]

Proposed Exemptions; The JPMorgan Chase Bank

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No.___ stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or fax. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov'',* or by fax to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed

exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The JPMorgan Chase Bank (Located in New York, New York)

[Application No. D–11062]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A)–(E) of the Code, shall not apply as of December 31, 2000, to:

(A) The continuation of a lease (the Lease), by the Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank (the Fund) with respect to which JPMorgan Chase Bank (JPMCB) is the trustee (the Trustee), of office space in a certain commercial office building (the Property) to Chase Global Funds Service Company (CGF), a party in interest with respect to employee benefit plans whose assets are invested in the Fund (Plans) and an affiliate of JPMCB; and

(B) the continued and future provision by JPMCB or its affiliates of letters of credit (Letter(s) of Credit) to guarantee the obligations of unrelated third-party tenants to pay rent to the Fund under commercial real estate leases.

This exemption is subject to the conditions set forth in Section II.

Section II—Conditions

(A) The Fund is represented by a fiduciary independent of JPMCB and its affiliates (the independent fiduciary) with respect to the Lease to perform the following functions:

(1) Confirm that when the Lease originally was entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to renewal options and rights of first refusal, were commercially reasonable and at least as favorable to the Plans as those terms and conditions which could have been obtained at arm's length with an unrelated third party;

(2) Determine, based upon a written appraisal report by a qualified appraiser independent of JPMCB and its affiliates, that the leasing renewal rate the Fund will charge CGF if CGF elects to exercise its renewal options under the Lease, effective in 2004 and thereafter, and that the leasing rate with respect to any space leased by CGF in the Property pursuant to any rights of first refusal CGF has under the Lease, accurately reflect at least fair market rental value;

(3) Negotiate and approve, subject to the appropriate ERISA fiduciary standards, such amendments to the Lease upon renewal(s) as it deems appropriate, including, for example: (i) A shorter renewal term than the current five year term; (ii) additional renewal period(s) (provided that the rent paid in any time periods after February 28, 2009, under any newly granted renewal option(s) would be at 100% of fair rental value, as opposed to the 95% of fair rental value that applies for periods through February 28, 2009); (iii) the lease of less square footage than the current square footage covered under the Lease; (iv) the lease of more square footage than the current square footage covered under the Lease (provided that the rent paid for any square footage in excess of the current square footage would also be leased at 100% of fair rental value, and not 95% of fair rental value); (v) using a ''base year'' under the Lease (upon which certain periodic increases such as taxes are calculated) updated to the year 2004, and (vi) allowing CGF to install shatter-proof glass in the space it leases; provided that all such amendments are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, as determined by the independent fiduciary; and

(4) Represent the Fund and the participants (Participants) in the Plans as independent fiduciary in any circumstances in addition to those described in subsection (3) above while the Lease (including any periods of renewal) is in effect which would present a conflict of interest for the Trustee, including but not limited to: default by CGF or disagreement on an economic computation under the Lease.

(B) The Fund is represented by an independent fiduciary with respect to any existing or future Letters of Credit to perform the following functions:

(1) Monitor monthly reports of rental payments of tenants utilizing a Letter of Credit issued by JPMCB or any affiliate to guarantee their lease payments;

(2) Confirm whether an event has occurred that calls for the Letter of Credit to be drawn upon; and

(3) Represent the Fund and the Participants as an independent fiduciary in any circumstances with respect to the Letters of Credit which would present a conflict of interest for the Trustee, including but not limited to: the need to enforce a remedy against itself or an affiliate with respect to its obligations under a Letter of Credit.

(C) Future Letters of Credit are issued by JPMCB or an affiliate to guarantee the obligations of third-party tenants to pay rent to the Fund under commercial real estate leases only if the following additional conditions are met:

(1) JPMCB or its affiliate, as the issuer of a Letter of Credit, has at least an ''A'' credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the Letter of Credit;

(2) The Letter of Credit has objective market drawing conditions and states precisely the documents against which payment is to be made;

(3) JPMCB does not ''steer'' the Fund's tenants to itself or its affiliates in order to obtain the Letter of Credit;

(4) Letters of Credit are issued only to tenants which are unrelated to JPMCB; and

(5) The terms of any future Letters of Credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates.

Section III—Definitions

(A) The term ''independent fiduciary'' means Aon Fiduciary Counselors, Inc. (AFC) or any successor independent fiduciary, provided that AFC or the successor independent fiduciary is: (1) Independent of and unrelated to JPMCB and its affiliates, and (2) appointed to act on behalf of the Fund for the purposes described in conditions II(A) and (B) above. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with JPMCB, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that an independent fiduciary may receive compensation for acting as an

independent fiduciary from JPMCB in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision and (3) more than 5 percent of such fiduciary's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year.

(B) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(C) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Effective Date: The exemption, if granted, will be effective as of December 31, 2000.

Summary of Facts and Representations

1. The applicant, JPMorgan Chase Bank (JPMCB), is a subsidiary of J.P. Morgan Chase & Co. and is based in New York, NY. J.P. Morgan Chase & Co. is the resulting company from a merger (the Merger) of J.P. Morgan & Co. Incorporated and The Chase Manhattan Corporation, effective as of December 31, 2000. As of the date of the Merger, which was accounted for as a pooling of interests, J.P. Morgan Chase & Co. became the second largest banking institution in the United States, with approximately $715 billion in assets and $42 billion in stockholders' equity. J.P. Morgan Chase & Co. is now a global financial services firm with operations in over 60 countries. Prior to November 10, 2001, it had as its principal subsidiaries: The Chase Manhattan Bank and Morgan Guaranty Trust Company (MGT), each a New York banking corporation headquartered in New York City, and Chase Manhattan Bank USA, National Association, headquartered in Delaware. On November 10, 2001, MGT merged into The Chase Manhattan Bank and changed its name to JPMorgan Chase Bank.

J.P. Morgan Chase & Co. is internally organized for management reporting purposes into five major business groups: (i) Investment banking, (ii) Treasury and securities services, (iii) J.P. Morgan Partners (a private equity investment firm), (iv) retail and middle-market banking and (v) investment management and private banking. Only the fifth business group is relevant to the applicant's exemption request.

2. JPMCB serves as trustee (the Trustee) to the Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank (the Fund).[1] The Fund has net assets of approximately $4.5 billion invested in 74 developed real estate properties, primarily office buildings, industrial parks, multi-family properties and retail properties. The applicant represents that approximately 126 employee benefit plans have invested in the Fund, both employee benefit plans subject to Title I of ERISA and section 4975 of the Code (Plans) and those not so subject, such as governmental plans within the meaning of section 3(32) of ERISA. The average investment per Plan is approximately $35.3 million. Currently, no Plan has an interest exceeding 10% of the Fund. The applicant represents that one pension plan invested in the Fund is sponsored by JPMCB and its investment represents 2.2% of the Fund's interests as of December 31, 2002.

The applicant represents that prior to December 31, 2000, in order to avoid triggering prohibited transactions under section 406 of the Act or section 4975 of the Code, the trustee, as the ERISA fiduciary of the Fund, relied on Prohibited Transaction Exemption (PTE) 84–14 (49 FR 9494, March 13, 1984) or Prohibited Transaction Exemption (PTE) 91–38 (56 FR 31966, July 12, 1991), as the circumstances dictated, in order to conduct the real estate activities of the Fund. The applicant represents that the Fund is a bank collective investment fund within the meaning of PTE 91–38, and an investment fund within the meaning of PTE 84–14. The applicant further represents that the Trustee, JPMCB, is a ''bank'' maintaining the Fund within the meaning of PTE 91–38 and meets the definition of a qualified professional asset manager (QPAM) under PTE 84–14.

As a result of the Merger, the applicant represents that the Trustee's ability to rely on PTE 84–14 and PTE 91–38 was affected with respect to two transactions discussed herein (the Lease Transaction and the Letters of Credit), as entities which may be parties in interest with respect to Plans became affiliates of the Trustee. Therefore, the applicant represents that conditions in both exemptions requiring that the party in interest involved in the transaction not be related to the qualified professional asset manager (QPAM) of the investment fund in the case of PTE 84–14, or the trustee of the bank collective investment fund in the case of PTE 91–38, could no longer be met.

With respect to the JPMCB plan invested in the Fund, the applicant represents that JPMCB has been, and is, operating the Fund in accordance with the conditions of PTE 91–38 except for the conditions it is unable to meet due to the Merger.

The Lease Transaction

3. The applicant represents that the Fund owns a rehabilitated office building located at 73 Tremont Street in Boston, Massachusetts (the Property). The Property represents 1.92% of the net asset value of the Fund. Chase Global Funds Service Company (CGF) is currently the largest tenant, occupying 136,010 square feet or 44.75% of the Property, pursuant to a lease (the Lease) executed on December 31, 1992, with a predecessor of CGF. The current Lease term commenced on March 1, 1994. CGF pays rent of $24.50 per square foot on 131,469 square feet and $20.50 per square foot on the remaining 4,541 square feet. CGF reimburses the Fund for a prorated share of common area maintenance, real estate taxes and property insurance over a 1994 ''base year,'' including its share of any increases for those costs over the base year. CGF is separately metered for electricity which is not included in the rent. If CGF sublets the space, any profits earned are split 50/50 with the Fund.

The Lease currently expires on February 28, 2004, and CGF gave notice on or before December 31, 2002 of its intent to renew the Lease for a period of five years which would begin on March 1, 2004, and end on February 28, 2009, at a rent of ''95% of fair market rent.'' The applicant represents that while the Lease renewal rate is expressed in terms of ''95% of fair market rent,'' this rate constitutes fair market rental value for space leased pursuant to a renewal option when the terms of the original Lease were negotiated as a package. The 5% discount is intended to reflect the cost savings to the Fund for not having to grant the normal concessions to the tenant that are typically given for initial free rent, so-called ''workout allowances,'' and the costs saved by the Fund for not having to advertise for a new tenant and pay real estate brokers. The Lease also provides that if any other space in the building occupied by another tenant becomes available, the Fund has the obligation to offer such space to CGF at the then fair market rent but otherwise pursuant to the terms of the Lease. CGF has five days from

[1] Prior to December 31, 2000, MGT served as trustee of the Fund.

receiving notice of the space becoming available to notify the Fund whether it will take such space and then proceed to negotiate the rental rate. The applicant represents that both the renewal option and the right of first refusal option features in the Lease are advantageous to the Fund because they provide a potential captive market for space in the building as it becomes available without the Fund having to advertise for another tenant, negotiate a new lease, incur legal fees and closing costs or risk periods of vacancy.

4. In connection with CGF's election to renew its option to extend the term of the Lease beyond February 28, 2004, it may elect to negotiate for an amendment of the Lease to permit: (a) A shorter renewal term than the current five-year term, (b) additional renewal option period(s), (c) the lease of less square footage then the current square footage covered under the Lease and/or (d) the lease of more such square footage. The rent paid by CGF for any time periods after February 28, 2009, under any newly granted renewal option, would be at 100% of fair rental value, as opposed to the 95% of fair rental value that applies for periods through February 28, 2009. Similarly, any square footage leased in excess of the current square footage would also be leased at 100% of fair rental value. (As a practical matter, any such space necessarily would become available from space given up from other tenants, so would be subject to the terms of CGF's right of first refusal which provides for rent at 100% of fair rental value.)

CGF may, in the course of electing to review its option to extend the term of the Lease beyond February 28, 2004, elect to negotiate with the independent fiduciary for other amendments to the Lease. Examples of the anticipated type of amendments to the Lease include using a ''base year'' under the Lease (upon which certain periodic increases such as taxes are calculated) updated to 2004 and allowing CGF to install shatter-proof glass in the space it leases.

5. The predecessor of CGF, Mutual Fund Service Company (MSFC), originally negotiated the Lease. The primary business of MSFC was to act as a third-party service provider to 401(k) plans, providing customer service personnel to answer questions to plan participants about their investment funds in 401(k) plans sponsored by their employers. MSFC also generated computerized monthly and quarterly statements as well as mailings to their customers. MSFC moved in September of 1993 and occupied the space rent free for six months, paying rent beginning on March 1, 1994. In 1997, CGF purchased the assets of MSFC, and the Fund consented to assumption of the Lease by CGF. After the purchase, CGF retained the personnel and business activities of MSFC. Thus, the applicant represents that the original Lease was negotiated by a party unrelated to both the Trustee and CGF.

6. The applicant represents that Aon Fiduciary Counselors, Inc. (AFC) is an independent fiduciary which has been retained by the Trustee on behalf of the Fund and the Plans. AFC is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940. AFC has acknowledged its duties, responsibilities and obligations to the Fund and the Plans' participants and beneficiaries as a fiduciary under the Act. AFC acts primarily as independent fiduciary for large pension plans. Nell Hennessy, President of AFC, will lead the project. Ms. Hennessy has been involved in a variety of transactions involving pension plan investment in real estate, including acquisition of individual properties, creation of real estate holding companies, and obtaining prohibited transaction exemptions for real estate syndications designed for pension plan investors. Ms. Hennessy represents that AFC is independent of J.P. Morgan Chase & Co. and its affiliates and the sponsors of the Plans. Ms. Hennessy further represents that AFC has never previously performed any services for J.P. Morgan Chase & Co. or its affiliates, and, as of the date of the applicant's submission, AFC's affiliates derived less than 1% of their annual gross income from J.P. Morgan Chase & Co. and its affiliates. Ms. Hennessy represents that no more than 5 percent of AFC's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in AFC's current tax year. The applicant represents that AFC will remain on retainer for the entire term of the Lease; additionally, in the event that AFC terminates its services as independent fiduciary, the applicant will notify the Department, and any successor will be as independent, of equal experience, and have responsibilities similar to those of AFC and will assume its responsibilities prior to AFC's departure.

The applicant represents that AFC, as the independent fiduciary, will:

(a) Confirm that when the Lease was originally entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to the renewal option and any rights of first refusal, were commercially reasonable and at least as favorable to the Plans as those terms and conditions which could have been obtained at arm's length with an unrelated third party;

(b) Determine, based upon a written appraisal report by an independent qualified appraiser, that the leasing renewal rate the Fund will charge CGF if CGF elects to renew its option(s) under the Lease, effective in 2004 and thereafter, and the leasing rate with respect to any space taken by CGF in the Property, pursuant to any rights of first refusal that CGF has under the Lease, accurately reflect at least fair market rental value;

(c) Negotiate and approve, subject to the appropriate ERISA fiduciary standards, such amendments to the Lease upon renewal(s) as it deems appropriate, including, for example: (i) A shorter renewal term than the current five year term; (ii) additional renewal period(s) (provided that the rent paid in any time periods after February 28, 2009, under any newly granted renewal option(s) would be at 100% of fair rental value, as opposed to the 95% of fair rental value that applies for periods through February 28, 2009); (iii) the lease of less square footage than the current square footage covered under the Lease; (iv) the lease of more square footage than the current square footage covered under the Lease (provided that the rent paid for any square footage in excess of the current square footage would also be leased at 100% of fair rental value, and not 95% of fair rental value); (v) using a ''base year'' under the Lease (upon which certain periodic increases such as taxes are calculated) updated to the year 2004, and (vi) allowing CGF to install shatter-proof glass in the space it leases; provided that all such amendments are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, as determined by AFC as independent fiduciary; and

(d) Represent the Fund and the Plans' participants as independent fiduciary in any circumstances in addition to those described immediately above while the Lease (including any periods of renewal) is in effect which would present a conflict of interest for the Trustee, including but not limited to: default by CGF or disagreement on an economic computation under the Lease.

The Letters of Credit

7. The applicant represents that prior to the Merger, The Chase Manhattan Bank issued a series of letters of credit (the Letters of Credit) to guarantee rent payment obligations of unrelated third-party tenants of buildings owned by the Fund. The tenants were not affiliates of J.P. Morgan & Co., Incorporated or The

Chase Manhattan Corporation prior to the Merger and are not affiliates of J.P. Morgan Chase & Co., post-Merger.

The applicant represents that a letter of credit is an instrument issued by a bank or other lending institution, whose function is similar to that of a guaranty and is used in commercial leasing transactions as a substitute for a security deposit. The applicant represents that the lending institution, upon issuing a letter of credit, promises that if actions of the tenant trigger certain default events set forth in the lease, such as bankruptcy of the tenant, it will make such lease payments directly to the Fund up to the face amount of the letter of credit. The beneficiary of the letter of credit, the Fund, is issued a redeemable instrument that it may take directly to the lending institution and demand payment merely by stating that payment is due pursuant to the terms of the lease. The bank is obligated to pay without further inquiry and generally cannot be sued by the tenant for having paid under the letter of credit, absent fraud on its part. The Fund is not required to have any further involvement with the tenant in order to receive payment under the letter of credit from the bank. The letters of credit automatically renew annually until their final stated expiration date, and are either cash collateralized by the tenants or, in the case of particularly creditworthy tenants, the tenants enter into a reimbursement agreement with the bank. The applicant represents that ''cash collateralized'' does not mean that cash is deposited as collateral. Rather, the collateral is a security interest in cash held by the bank in the name of the tenant. The applicant represents that the terms of the Letters of Credit are governed by the 1993 Uniform Customs and Practice for Documentary Credits (Customs and Practice) that contain standard provisions widely accepted in the banking industry promulgated by the International Chamber of Commerce Commission on Banking Technique and Practice which most banking institutions incorporate by reference in their letters of credit.

8. One Letter of Credit, P–398582, was issued by Chase Manhattan Bank with respect to property referred to in the application as the Glendale Plaza property. The Letter of Credit currently has an aggregate amount of $500,000 and names Glendale Plaza Realty Holding Co., (a wholly-owned subsidiary of the Fund) as beneficiary. The Glendale Plaza property was acquired by Glendale Plaza Realty Holding Company from an unrelated third party on November 30, 2000. The tenant subsequently directed that the Letter of Credit be transferred to Glendale Plaza Realty Holding Co., as beneficiary. The letter automatically renews, without action by JPMCB, through its final expiration date of March 22, 2004.

9. A second Letter of Credit, P–264349, was issued by Chase Manhattan Bank with respect to property referred to by the applicant as the 303 Wacker Drive property, located in Chicago, Il. The property was purchased from Metropolitan Life Insurance Co (MetLife) in December 1997 by the Fund's wholly-owned subsidiary 303 Wacker Realty, LLC. The letter of credit was purchased by the tenant in favor of the original landlord, MetLife, in an amount of $18,845. The Letter of Credit provided that the face amount of the letter could be reduced over the course of the lease in proportion to the tenant's remaining obligations thereunder and was accordingly reduced to a face amount of $12,563 as of October 1, 1998. The applicant represents that this type of reduction for a tenant in good standing is traditional in the real estate industry. The letter expired on September 30, 2001, and was not reissued in the name of 303 Wacker Realty, LLC and was not renewed. The applicant represents that the tenant is currently in bankruptcy and had rent in arrears discharged in the bankruptcy in the amount of $17,733.87. On the recommendation of the independent fiduciary, the property manager has reimbursed the Fund for $12,563, the full face amount of the Letter of Credit.

The applicant represents that on July 5, 2000, a new Letter of Credit was issued with respect to the same tenant in favor of 303 Wacker Realty, LLC, in the amount of $6,990. This letter covers additional space leased by the tenant with final annual automatic renewal dates until June 30, 2005, the final expiration date. The applicant requests relief for both Letters of Credit associated with the property owned by 303 Wacker Realty, LLC.

10. The applicant also requests exemptive relief for any future Letters of Credit issued by JPMCB or its affiliates to third-party tenants in Fund-owned buildings. The applicant represents that such future Letters of Credit would be structured similarly to the current outstanding Letters of Credit.

The applicant represents that the Letters of Credit function to ensure continuous and timely rental payments in the case of default by one of the tenants in the buildings owned by the Fund and their use is customary in the real estate and banking industries. The applicant represents that it is generally difficult for tenants to obtain a Letter of Credit from an institution with which they do not otherwise have a business banking relationship. Therefore, if JPMCB or its affiliate is the tenant's commercial bank, it may be the tenant's only source to obtain a Letter of Credit. In addition, the applicant represents that given the increasing number of bank mergers, there are fewer banks available from which to purchase a Letter of Credit. The applicant represents that eliminating JPMCB or its affiliates from the available pool of Letters of Credit providers would be disadvantageous to the Fund and the Plans.[2]

11. The applicant represents that AFC has been retained as independent fiduciary to determine whether it is appropriate to draw on any currently outstanding or future Letter of Credit. AFC will be given periodic (monthly) reports of rental payments by the tenant so it can confirm whether the Letter of Credit should be called. In addition, AFC will act in place of the Trustee in any situation which presents a conflict of interest for the Trustee, including but not limited to: the need to enforce a remedy against itself or an affiliate with respect to its obligations under a Letter of Credit.

Future Letters of Credit issued by JPMCB or its affiliates will be permitted only if: (a) JPMCB or its affiliate, as the issuer of a Letter of Credit, has at least an ''A'' credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the Letter of Credit; (b) the Letter of Credit has objective market drawing conditions; (c) JPMCB does not ''steer'' the Fund's tenants to itself or its affiliates in order to obtain the Letter of Credit; (d) Letters of Credit are issued only to tenants which are unrelated to JPMCB; and (e) the terms of any future Letters of Credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates.

12. The applicant represents that prior to the Merger, affiliates of The Chase Manhattan Corporation leased space in the Park Central office complex owned by the Fund in Dallas, Texas. Since December 31, 2000, the Fund has leased

[2] The applicant states that several more Letters of Credit were issued to joint ventures in which the Fund has an interest. The applicant represents that such ventures constitute ''real estate operating companies'' within the meaning of the plan asset regulations set forth in 29 CFR section 2510.3–101. The applicant notes the existence of these other Letters of Credit to show that the ability of JPMCB and its affiliates to provide such Letters of Credit are an important source of economic protection for the Fund.

office space to J.P. Morgan Chase & Co. affiliates under four separate leases in the Park Central office complex. The complex is comprised of Park Central Buildings VII, VIII, and IX, although all of the space leased to J.P. Morgan Chase & Co. affiliates is located in building VII.

The leases in question are as follows:

J.P. Morgan Chase & Co. Affiliate	Suite	Size (sf)	Rate (psf/yr)	Execution date	Expiration
The Chase Manhattan Bank (now JPMCB)	102	6,536	$16.50	10/1/96	9/30/01
Chase Manhattan Mortgage Corp	1400	7,845	23.50	6/1/99	3/31/04
Chase Manhattan Mortgage Corp	1440	1,798	23.50	4/1/99	3/31/04
Chase Manhattan Mortgage Corp	750	2,500	21.00	7/9/01	(1)

[1] Month to month.

The applicant represents that each lease meets the conditions of Part III of PTE 84–14 for real estate leases, and therefore a prohibited transaction exemption is not necessary to cover the leases. Specifically, the applicant represents that the following conditions of PTE 84–14, Part III, are met: First, the unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants. Second, at the time the transaction is entered into (and at the time of any subsequent renewal or modification that requires the consent of the Trustee as QPAM), the terms of the transaction may not be more favorable to the lessee than the terms generally available in arm's-length transactions between unrelated parties. Third, no commission or other fee is paid by the Fund in connection with the lease to the Trustee, or to any person or entity (or any affiliate) who made the decision to have, or had the direct authority to direct, any Plan to invest in the Fund. The applicant represents that the fourth condition of Part III also is met which requires that the amount of space covered by the lease does not exceed the greater of 7,500 square feet or one percent (1%) of the available space of the office building, integrated office park or commercial center in which the Fund has the investment. In this latter regard, the applicant represents that Park Central Buildings VII, VIII and IX owned by the Fund constitute one commercial center or integrated office park and that all of the leases constitute less than 1% of the square footage of the Park Central commercial center or office park.[3]

13. In summary, with respect to the Lease transaction, the applicant represents that the exemption will satisfy the statutory criteria under section 408(a) of the Act for the following reasons:

(a) The Fund was represented by a qualified independent fiduciary (*i.e.*, the Trustee, who was not then affiliated with the tenant, CGF) when the original Lease and all amendments thereto were negotiated and executed; and

(b) The Fund at all times on or after December 31, 2000, will be represented by a qualified independent fiduciary (*i.e.*, AFC) to perform the following functions:

(i) Confirm that when the Lease was originally entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to renewal options and rights of first refusal, were commercially reasonable and at least as favorable to the Plans as those terms and conditions which could have been obtained at arm's length with an unrelated third party;

(ii) Determine, based upon a written appraisal report by an independent qualified appraiser, that the leasing renewal rate the Fund will charge CGF if CGF elects to renew its option(s) under the Lease, effective in 2004 and thereafter, and the leasing rate with respect to any space leased by CGF in the Property, pursuant to any rights of first refusal CGF has under the Lease, accurately reflect at least fair market rental value;

(iii) Negotiate and approve, subject to the appropriate ERISA fiduciary standards, such amendments to the Lease upon renewal(s) as it deems appropriate, including, for example: (i) A shorter renewal term than the current five year term; (ii) additional renewal period(s) (provided that the rent paid in any time periods after February 28, 2009, under any newly granted renewal option(s) would be at 100% of fair rental value, as opposed to the 95% of fair rental value that applies for periods through February 28, 2009); (iii) the lease of less square footage than the current square footage covered under the Lease; (iv) The lease of more square footage than the current square footage covered under the Lease (provided that the rent paid for any square footage in excess of the current square footage would also be leased at 100% of fair rental value, and not 95% of fair rental value); (v) using a ''base year'' under the Lease (upon which certain periodic increases such as taxes are calculated) updated to the year 2004, and (vi) allowing CGF to install shatter-proof glass in the space it leases; provided that all such amendments are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, as determined by the independent fiduciary; and

(iv) Represent the Fund and the Plans' participants as an independent fiduciary in any circumstances in addition to those described above while the Lease (including any periods of renewal) is in effect which would present a conflict of interest for the Trustee, including but not limited to: default by CGF or disagreement on an economic computation under the Lease.

14. With respect to the Letters of Credit, the applicant represents that the exemption will meet the statutory criteria under section 408(a) of the Act for the following reasons:

(a) The Fund was represented by a qualified independent fiduciary (*i.e.*, the Trustee, who was not then affiliated with The Chase Manhattan Bank, the issuer of the Letters of Credit) when the existing Letters of Credit were executed;

(b) The Fund at all times on or after December 31, 2000, will be represented by a qualified independent fiduciary with respect to any existing or future Letters of Credit to perform the following functions:

(i) Monitor monthly reports of rental payments of tenants utilizing a Letter of Credit issued by JPMCB or any affiliate to guarantee their lease payments;

(ii) Confirm whether an event has occurred that calls for the Letter of Credit to be drawn upon; and

(iii) Represent the Fund and the Participants as an independent fiduciary in any circumstances with respect to the Letter of Credit which would present a conflict of interest for the Trustee, including but not limited to: the need to enforce a remedy against itself or an

[3] The applicant is not requesting exemptive relief in this proposed exemption for the leases in the Park Central office complex, nor is the Department providing any views in this proposed exemption as to whether the conditions of PTS 84–14 would be met for such transactions.

affiliate with respect to its obligations under a Letter of Credit; and

(c) Future Letters of Credit may be issued by JPMCB or an affiliate only if the following additional conditions are met:

(i) JPMCB or its affiliate, as the issuer of a Letter of Credit, has at least an ''A'' credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the Letter of Credit;

(ii) The Letter of Credit has objective market drawing conditions;

(iii) JPMCB does not ''steer'' the Fund's tenants to itself or its affiliates in order to obtain the Letter of Credit;

(iv) Letters of Credit are issued only to tenants which are unrelated to JPMCB; and

(v) The terms of any future Letters of Credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates.

For Further Information Contact: Karen E. Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Deutsche Bank AG (Deutsche Bank)

[Application Nos. D–11086; D–11087; D–11088; D–11089; and D–11090]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

Section I: Basic Transaction

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to a plan (as defined in section (V(h)) and such plan, provided that the Deutsche Bank In-house Manager (DBIM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the DBIM, and either the DBIM, or (so long as the DBIM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the DBIM, makes the decision on behalf of the plan to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of $5,000,000 or more, which has been negotiated on behalf of the plan by the DBIM will not fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 [4] (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 83–1 [5] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Exemption 88–59 [6] (relating to certain mortgage financing arrangements);

(c) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the DBIM, the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act; and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(f) The party in interest dealing with the plan is neither the DBIM nor a person related to the DBIM (within the meaning of section IV(d));

(g) The DBIM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(h) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an exemption audit (as defined in section IV(f)) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance with the policies and procedure adopted by the DBIM in accordance with section I(g); and

(i) In addition to the above:

(1) The DBIM is a bank that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital in excess of $1,000,000 and is either supervised by a state or federal agency, or by the German Federal Banking Supervisory Authority, Bundesanstalt fur Finanzdienstleistungsaufsicht (BAFin) in cooperation with the Deutsche Bundesbank (Bundesbank);

(2) Prior to entering into any transaction described in the exemption, the DBIM agrees in writing:

(A) To submit to the jurisdiction of the United States;

(B) To appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) To consent to service of process on the Process Agent;

(D) That it may be sued in the United States courts in connection with the transactions described in this proposed exemption;

(E) To comply with, and be subject to, all relevant provisions of the Act; and

(F) That enforcement of any claim arising between a plan(s) and the DBIM, resulting from a transaction described in the proposed exemption, will occur in the United States courts.

Section II: Leasing of Office Space

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) The leasing of office or commercial space owned by a plan managed by a DBIM to an employer any of whose employees are covered by the plan or an affiliate of such an employer (as defined in section 407(d)(7) of the Act), if—

(1) The plan acquires the office or commercial space subject to an existing lease with an employer, or its affiliate as a result of foreclosure on a mortgage or deed of trust;

(2) The DBIM makes the decision on behalf of the plan to foreclose on the mortgage or deed of trust as part of the exercise of its discretionary authority;

(3) The exemption provided for transactions engaged in with a plan

[4] 46 FR 7527; January 23, 1981.

[5] 48 FR 895; January 7, 1983.

[6] 53 FR 24811; June 30, 1988.

pursuant to section II(a) is effective until the later of the expiration of the lease term or any renewal thereof which does not require the consent of the plan lessor;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center; and

(5) The requirements of sections I(c), I(g), and I(h) are satisfied with respect to the transaction.

(b) The leasing of residential space by a plan to a party in interest if—

(1) The party in interest leasing space from the plan is an employee of an employer any of whose employees are covered by the plan or an employee of an affiliate of such employer (as defined in section 407(d)(7) of the Act);

(2) The employee who is leasing space does not have any discretionary authority or control with respect to the investment of the assets involved in the lease transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(3) The employee who is leasing space is not an officer, director, or a ten percent (10%) or more shareholder of the employer or an affiliate of such employer;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the DBIM, the terms of the transaction are not less favorable to the plan than the terms afforded by the plan to other, unrelated lessees in comparable arm's length transactions;

(5) The amount of space covered by the lease does not exceed five percent (5%) of the rentable space of the apartment building or multi-unit residential subdivision, and the aggregate amount of space leased to all employees of the employer or an affiliate of such employer does not exceed ten percent (10%) of such rentable space; and

(6) The requirements of section I(a), I(c), I(d), I(g), and I(h) are satisfied with respect to the transaction.

Section III: Places of Public Accommodation

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by an DBIM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Section IV: Definitions

For the purposes of this exemption:

(a) The term ''Deutsche Bank In-house Manager'' or ''DBIM'' means an organization which is—

(1) Deutsche Bank, or a direct or indirect wholly-owned bank or trust company subsidiary of Deutsche Bank, supervised under the laws of the United States, a State, or Germany, that (A) Has the power to manage, acquire, or dispose of assets of a plan, (B) has, as of the last day of its most recent fiscal year, equity capital (*i.e.*, common and preferred stock, surplus, undivided profits, contingency reserves, group contingency reserves, and other capital reserves) in excess of $1,000,000,[7] and (C) has as of the last day of its most recent fiscal year under its management and control total assets attributable to plans maintained by affiliates of the DBIM (as defined in section IV(b)) in excess of $50 million; provided that if it has no prior fiscal year as a separate legal entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from the employer.

In addition, plans maintained by affiliates of the DBIM and/or the DBIM, must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million.

(b) For purposes of section IV(a) and section IV(h), an ''affiliate'' of an DBIM means a member of either: (1) a controlled group of corporations (as defined in section 414(b)) of the Code of which the DBIM is a member; or (2) a group of trades or businesses under common control (as defined in section 414(c))of the Code of which the DBIM is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the Code or the rules thereunder.

(c) The term ''party in interest'' means a person described in section 3(14) of the Act and includes a ''disqualified person'' as defined in section 4975(e)(2) of the Code.

(d) An DBIM is ''related'' to a party in interest for purposes of section I(f) of this exemption if the party in interest (or a person controlling, or controlled by, the party in interest) owns a five percent (5%) or more interest in the DBIM or if the DBIM (or a person controlling, or controlled by, the DBIM) owns a five percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term ''interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise;

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 8, 2002, or any renewal that requires the consent of the DBIM occurs on or after April 8, 2002, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be

[7] The condition in Part IV(a) of the proposed exemptioin that the INHAM have in excess of $1 million in equity capital mirrors the parallel requirement in Part IV(a) of QPAM, PTE 84–14.

deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(f) Exemption Audit. An ''exemption audit'' of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the DBIM pursuant to Section I(g) for consistency with each of the objective requirements of this exemption (as described in Section IV(g)).

(2) A test of a representative sample of the plan's transactions in order to make findings regarding whether the DBIM is in compliance with (i) the written policies and procedures adopted by the DBIM pursuant to section I(g) of the exemption and (ii) the objective requirements of the exemption.

(3) A determination as to whether the DBIM has satisfied the definition of an DBIM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(g) For purposes of section IV(f), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the DBIM to assure compliance with each of these requirements:

(1) The definition of an DBIM in section IV(a).

(2) The requirements of Part I and section I(a) regarding the discretionary authority or control of the DBIM with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of section I(a).

(4) For a transaction described in section I:

(A) That the transaction is not entered into with any person who is excluded from relief under section I(e)(1), section I(e)(2), to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or section I(f), and

(B) That the transaction is not described in any of the class exemptions listed in section I(b).

(5) For a transaction described in Part II:

(A) If the transaction is described in section II(a),

(i) That the transaction is with a party described in section II(a);

(ii) That the transaction occurs under the circumstances described in section II(a)(1) and (2);

(iii) That the transaction does not extend beyond the period of time described in section II(a)(3); and

(iv) That the percentage test in section II(a)(4) has been satisfied or

(B) If the transaction is described in section II(b),

(i) That the transaction is with a party described in section II(b)(1);

(ii) That the transaction is not entered into with any person excluded from relief under section II(b)(2) to the extent such person has discretionary authority or control over the plan assets involved in the lease transaction or section II(b)(3); and

(iii) That the percentage test in section II(b)(5) has been satisfied.

(h) The term ''plan'' means a plan maintained by the DBIM or an affiliate of the DBIM which is an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code. Notwithstanding the foregoing, the term ''plan'' includes a plan maintained by any entity in which the DBIM, or an affiliate of the DBIM (as defined in section IV(b) of the proposal), holds more than a 20 percent equity interest, provided that such plan's assets are commingled for investment purposes in an entity the assets of which are plan assets under 29 CFR 2510.3–101 and 50 percent or more of the units of beneficial interest in such entity are held by plans maintained by the DBIM or affiliates of the DBIM.

Effective Date of Exemption: The effective date of this exemption is April 8, 2002.

Summary of Facts and Representations

1. The affected plans will consist of employee benefit plans that are covered under the provisions of Title I of the Act, as amended, and/or subject to section 4975 of the Code and that are sponsored by the applicant or its affiliates.

2. Deutsche Bank, a German banking corporation and a leading commercial bank, provides a wide range of banking, fiduciary, record keeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. Deutsche Bank has a physical presence worldwide. Deutsche Bank is currently one of the largest financial institutions in the world in terms of assets. As of 2001, total assets of Deutsche Bank were 928,994 million Euros. Shareholders equity equaled 43,683 million Euros. Deutsche Bank manages over $585 billion in assets either through collective trusts, separately managed accounts or mutual funds.

Under PTE 84–14, which provides conditional relief for transactions with a plan that are managed by a qualified professional asset manager (QPAM), the Department explicitly provided for banks to act as QPAMs.[8] Deutsche Bank, which is in the business of managing assets, and supervised in that business by a variety of governmental regulators, including the German banking authorities, the Federal Reserve Board and other foreign local bank regulators, may manage the assets of its own plans, and those of its affiliates, and, therefore, seeks section 406(a) relief for dealing with parties in interest to its own plans, other than parties affiliated with it.

3. Outside the United States, Deutsche Bank, as a whole, is not supervised by a state or by the United States. However, Deutsche Bank is regulated and supervised globally by the Bundesanstalt für Finanzdienstleistungsaufsicht—BAFin (BAFin) in cooperation with the Deutsche Bundesbank, (Bundesbank).[9]

The BAFin is a federal institution with ultimate responsibility to the German Ministry of Finance.[10] The Deutsche Bundesbank is the central bank of the Federal Republic of Germany and an integral part of the European Central Banks. The BAFin supervises the operations of banks, banking groups, financial holding groups and foreign bank branches in Germany, and has the authority to (a) Issue and withdraw banking licenses, (b) issue regulations on capital and liquidity requirements of banks, (c) request information and conduct

[8] *See* Section V(a)(1) of PTE 84–14, 49 FR at 9506.

[9] In addition, Deutsche Bank, New York Branch, is regulated and supervised by the New York State Banking Department. Certain activities of Deutsche Bank's New York branch are also regulated and supervised by the Federal Reserve Bank of New York. Bankers Trust Company, an indirect wholly owned subsidiary of Deutsche Bank, is a New York State bank and a member of the Federal Reserve System.

[10] Following the adoption on April 22, 2002 of the Law on Integrated Financial Services Supervision (Gesetz über die integrierte Finanzaufsicht—FinDAG), the German Financial Supervisory Authority, BAFin was established on 1 May 2002. The functions of the former offices for banking supervision (Bundesaufsichtsamt für das Kreditwesen—BAKred), insurance supervision (Bundesaufsichtsamt für das Versicherungswesen—BAV) and securities supervision (Bundesaufsichtsamt für den Wertpapierhandel—BAWe) have been combined in a single state regulator that supervises banks, financial services institutions and insurance undertakings across the entire financial market and comprises all the key functions of consumer protection and solvency supervision. The BAFin is a federal institution governed by public law that belongs to the portfolio of the Federal Ministry of Finance and as such, has a legal personality. Its two offices are located in Bonn and Frankfurt/Main. The BAFin supervises about 2,700 banks, 800 financial services institutions and over 700 insurance undertakings.

investigations, (d) intervene in cases of inadequate capital or liquidity endangered deposits, or bankruptcy by temporarily prohibiting certain banking transactions. The BAFin ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. The BAFin reviews compliance with these operational and internal control standards through an annual audit performed by the year-end auditor and through special audits ordered by the BAFin. The supervisory authorities require information on the condition of Deutsche Bank and its branches through periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The supervisory authorities also require information from Deutsche Bank regarding capital adequacy, country risk exposure, and exposures. German banking law mandates penalties to ensure correct reporting to the supervisory authorities, and auditors face penalties for gross violations of their duties.

Additionally, the BAFin, in cooperation with the Bundesbank supervises all branches of Deutsche Bank, wherever located, subjecting them to announced and unannounced on-site audits, and all other supervisory controls applicable to German banks.[11] With respect to branches located in the member states, such audits are carried out consistent with the applicable European Directives, and with respect to branches outside the EEA, consistent with applicable international agreements, memoranda of understanding, or other arrangements with the relevant foreign supervisory authorities.[12]

Deutsche Bank's subsidiaries that pursue banking and other financial activities (other than insurance) or activities that are closely related thereto are consolidated with Deutsche Bank and form a banking group for purposes of the capital ratios and the large exposure limits that the bank is required to meet also on a group-wide basis. In conformity with European Directives,[13] the BAFIN supervises such banking groups (where their parent institution is domiciled in Germany) on a consolidated basis.

While oversight is less individualized for subsidiaries than for branches, the supervision extends to adequacy of equity capital of banking and financial holding groups and compliance with the regulations regarding large loans granted by such groups. Thus, Deutsche Bank is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.[14]

There are two deposit insurance programs that cover Deutsche Bank and its foreign branches. The first is a European Union required mandatory deposit insurance system established in 1998 that insures deposits denominated in the currency of an EEA member state up to the lesser of 90% of the deposit amount or 20,000 euros. This statutory deposit protection scheme is maintained, as far as private commercial banks like Deutsche Bank are concerned, by a separate institution (Entschaedigungseinrichtung deutscher Banken mbH) that is subject to supervision by the BAFIN. In addition, since 1976, the Association of German Banks (Bundesverband deutscher Banken e.V.) has maintained a voluntary deposit protection program called the Deposit Protection Fund (Einlagensicherungsfonds) that safeguards liabilities in excess of the thresholds guaranteed by the European Union program, up to a protection ceiling for each creditor of 30% of the liable capital of the bank.[15]

The Deposit Protection Fund was created to give assistance, in the interest of depositors, in the event of imminent or actual financial difficulties of banks, particularly when the suspension of payments is threatened, and to prevent the impairment of public confidence in private banks. The Deposit Protection Fund is funded by regular contributions paid by every German bank that has elected to participate in the Deposit Protection Fund. Participating banks may be required to make special contributions to the extent requested by the Deposit Protection Fund to enable it to fulfill its purpose.

The Deposit Protection Fund relies on the Auditing Association of German Banks (Pruefungsverband deutscher Banken e.V. or Auditing Association) to audit banks and make recommendations to the banks. Following those recommendations is a requirement for all banks covered by the Deposit Protection Fund. Banks are no longer permitted to be part of the Deposit Protection Fund if, inter alia, they give incomplete or incorrect information to the Federal Association of German Banks in connection with the Fund; if they are in default with the payment of contributions for more than two months after a written reminder; if they do not support the Auditing Association in its auditing activity or do not promptly fulfill any condition set by the Auditing Association; if they fail to make correct disclosure to depositors; or if they make incorrect statements or incorrectly advertise the deposit insurance program. Thus, the German deposit protection system protects deposits throughout the world wherever a branch of a participating German bank is located.

4. The proposed exemption is similar to PTE 96–23.[16] Generally, PTE 96–23 conditionally permits: (1) Plans whose assets are managed by an in-house asset manager (INHAM) to enter into transactions with parties in interest where the INHAM directs the transaction; (2) the leasing of office or commercial space owned by a plan managed by an INHAM to an employer whose employees are covered under the plan (or the employer's affiliate), where the plan acquires the office or commercial space subject to an existing

[11] Deutsche Bank's branches domiciled outside the European Economic Area (EEA) are also subject to local regulation and supervision by the host country's supervisory authority, *e.g.*, the Ministry of Finance in Japan, the Swiss Federal Banking Commission in Switzerland, the Australian Prudential Regulation Authority in Australia, and the Office of the Superintendent of Financial Institutions in Canada. For Deutsche Bank's branches domiciled in EEA member states, the BAFin is the lead supervisory authority pursuant to the rules on the ''European passport'', and only some aspects are subject to complementary supervision by the host country's supervisory authority (*e.g.*, the Securities and Futures Authority in the United Kingdom supervises the conduct of the investment business of Deutsche Bank in the United Kingdom).

[12] As a result of meetings between the U.S. and German regulators in October 1993, the U.S. Department of Treasury has accorded national treatment to German bank branches, and the German Ministry of Finance has granted relief to branches of U.S. banks in Germany, in particular with respect to ''dotation'' or endowment capital requirements and capital adequacy standards. Since the German Banking Act (s. 53c) allows such exemptions only insofar as branches of German companies are afforded equal exemptions in the foreign state, this confirms indirectly the recognition of the German banking supervisory standards by the U.S. regulators.

[13] *See, e.g.*, Council Directive 92/30/EEC of 6 April 1992 on the supervision of credit institutions on a consolidated basis, Council Directive 92/121/EEC of 21 December 1992 on the monitoring and control of large exposures of credit.

[14] This is also the conclusion reached by the Board of Governors of the Federal Reserve System in its Order approving Deutsche Bank's application to become a bank holding company, effective May 20, 1999.

[15] Liable Capital means the sum of core capital and supplementary capital as defined in section 10, subsection (2) of the German Banking Act. However, for measurement of the protection ceiling, the supplementary capital, as defined in section 10, subsection (2b) of the German Banking Act, shall only be taken into account up to an amount of 25% of the core capital, as defined in section 10, subsection (2a) of the German Banking Act. Financial data on the date of the last published annual financial statements of the bank shall be determinative.

[16] 61 FR 15,975 (Apr. 10, 1996).

lease with an employer, or its affiliate, as a result of foreclosure on a mortgage or deed of trust directed by the INHAM; (3) the leasing of residential space by a plan to a party in interest who is an employee of a covered employer or affiliate thereof, but not an officer, director, or a 10% or more shareholder of the employer or affiliate or a fiduciary with respect to the leased assets; and (4) the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by an INHAM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

One of the requirements of PTE 96–23 is that the INHAM meet the definition of INHAM under section IV(a). In pertinent part, Part IV(a)(2) of PTE 96–23 requires an ''INHAM'' to be:

> An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to plans maintained by affiliates of the INHAM (as defined in section IV(b)) in excess of $50 million; provided that if it has no prior fiscal year as a separate legal entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from the employer.[17]

The registered investment adviser requirement ''assure[s] that the INHAM is in the business of investment management and, thus, in a position to develop experience and sophistication in dealing with investment issues.''[18] The requirement also assures that the INHAM is subject to government supervision. Registration of the INHAM as an investment adviser assures that the INHAM is subject to regulation under the Investment Advisers Act of 1940 and oversight by the Securities and Exchange Commission. In granting the final PTE 96–23, the Department noted that ''oversight by the Securities and Exchange Commission as a result of registration as an investment adviser under the Investment Advisers Act of 1940 provides an important safeguard under the exemption.''[19] Additionally, the Department explained that the $50 million in plan assets requirement provides further protection by ensuring that the INHAM is well qualified:

> * * * INHAMs of large plans are more likely to have an appropriate level of expertise in financial and business matters. In this regard, the Department believes that the requirement that the INHAM have a significant dollar amount of assets under its management and control attributable to plans maintained by affiliates which are separately accountable for the operation of their respective plans provides an additional safeguard under the exemption.[20]

Like registered investment advisers, banks may also be experienced investment managers.

Domestic banks, such as Bankers Trust Company, like registered investment advisers, are also subject to government regulation. Bankers Trust Company is a bank supervised by New York State and the Federal Reserve Bank.

In developing the QPAM class exemption, the Department noted that each of the categories of asset manager [*e.g.*, banks] is subject to regulation by Federal or State agencies.[21]

For these reasons, it is represented that the proposed exemption is similar to PTE 96–23. The proposed exemption treats Bankers Trust, Deutsche Bank, or any affiliated bank regulated under the laws of the United States, or Germany as an INHAM under Part IV. To this end, the following subparagraph will replace subparagraphs (1) and (2) of section IV(a) of PTE 96–23:

> (1) Deutsche Bank, or a direct or indirect wholly-owned bank or trust company subsidiary of Deutsche Bank, supervised under the laws of the United States, a State, or Germany, (A) has the power to manage, acquire, or dispose of assets of a plan and (B) has, as of the last day of its most recent fiscal year, equity capital (*i.e.*, common and preferred stock, surplus, undivided profits, contingency reserves, group contingency reserves, and other capital reserves) in excess of $1,000,000.

5. The applicant represents that the proposed exemption would be protective of participants and beneficiaries because it essentially contains the same protective conditions found in PTE 96–23. Additionally, the proposed exemption would be protective because regulation under the laws of Germany is comparable to regulation under the laws of the United States or a State.

6. In summary, it is represented that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because the proposed exemption: (a) Will benefit in-house plans by ensuring that plans have greater flexibility in choosing among expert, experienced investment managers; (b) will not be detrimental to plans because banks have proven expertise and experience in managing plan assets and the banking laws and regulations of Germany provide protection and oversight that is comparable to those of the United States or a State; (c) would allow plans to take greater advantage of the investment management expertise and experience of the world's largest bank in terms of assets and one of the world's largest asset managers; and (d) would allow a plan's DBIM to consider existing service providers when seeking goods, services, and facilities, thus increasing the plan's choices (which may afford greater quality at lower costs) and eliminating the compliance costs of ensuring that a counter-party is not a party in interest (*i.e.*, as a service provider or as related to a service provider).

Notice to Interested Persons: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by publication in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Mr. Khalif I. Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Law Offices of Richard D. Gorman Pension & Profit Sharing Plan (the Plan) Located in Monterey, California

[Application No. D–11104]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of unimproved real property (the Property) by the Plan to Mr. Richard Gorman (Mr. Gorman), a trustee of the Plan, and a party in interest with respect to the Plan, provided that the following conditions are satisfied:

[17] 61 FR at 15982.

[18] 60 FR at 15599.

[19] 61 FR at 15980.

[20] 61 FR at 15980.

[21] Preamble to Proposed PTE 84–14, 47 FR 56945, 56947 (Dec. 21, 1982).

(a) The sale is a one-time cash transaction;

(b) The Plan receives the greater of either: (i) $290,000; or (ii) the fair market value for the Property established at the time of the sale by an independent, qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with the sale.

(B) Summary of Facts and Representations

1. The Plan is a discretionary profit sharing plan. The Plan's current trustee is Mr. Gorman. The Plan sponsor is a single practitioner law firm, with one secretary as an employee. The Plan has 2 participants. As of July 8, 2002, the Plan had approximately $408,567.64 in total assets.

2. On August 20, 1996, the Plan purchased the Property from Bruce Munro and Shirley G. Mackintosh, unrelated third parties, for $143,000. Mr. Gorman propose to pay the fair market value of the Property, which would be paid in full in cash at a closing to be held subsequent to the granting of the proposed exemption.

The applicant states that the Property has not been an income-producing asset and has been held for possible appreciation. The Plan has paid for taxes, insurance and maintenance on the Property since the acquisition (the Holding Costs). Specifically, the Plan has paid the following Holding Costs since its acquisition of the Property: (i) Real estate taxes, $9,600; (ii) Insurance, $1,500; (iii) Maintenance fees, $3,000. The applicant states that the Holding Costs for the Property have been approximately $14,100. Therefore, the total cost for the Property (*i.e.*, the acquisition price of $143,000, plus the Holding Costs of approximately $14,100) is approximately $157,100 as of July 2002.

3. The Property is an unimproved 909 square foot parcel of land located at 19 Yankee Point Drive, Carmel, California. The Property was appraised on April 15, 2002. The appraisal was prepared by Raymond A. Elarmo (Mr. Elarmo), who is an independent, licensed real estate appraiser in the state of California.

Mr. Elarmo represents that although the Property is adjacent to the home of Mr. Gorman, the Property may or may not increase the value of Mr. Gorman's home due to concerns regarding water availability for the Property.

Mr. Elarmo states that consideration was given in the appraisal to three approaches to value, *i.e.*, the cost approach, sales comparison approach, and income approach. Mr. Elarmo relied on the sales comparison approach to determine the fair market value of the Property. Mr. Elarmo has determined that the fair market value of the Property is $290,000.

4. The applicant now proposes that the sale of the Property would provide liquidity to the Plan. Plan assets would then not be locked into a piece of land that has little foreseeable use. The Plan will pay no commissions or other expenses associated with the sale. The applicant will pay the Plan in cash, the greater of either:(a) $290,000; or (b) the fair market value of the Property, as established by a qualified, independent appraiser at the time of the transaction.

5. In summary, the applicant represents that the transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The proposed sale will be a one-time cash transaction; (b) the Plan will receive the greater of either: (i) $290,000; or (ii) the current fair market value for the Property, as established at the time of the sale by an independent, qualified appraiser; (c) the Plan will pay no fees, commissions or other expenses associated with the sale; and (d) the sale will enable the Plan to divest itself of a non-income producing asset and acquire investments which may yield higher returns.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Khalif I. Ford of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC this 18th day of March, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–6851 Filed 3–20–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified herein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary

of Labor pursuant to the previsions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute in minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedure to be practical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain on expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Part 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI020002 (Mar. 1, 2002)

Volume II

Pennsylvania
PA020001 (Mar. 1, 2002)
PA020002 (Mar. 1, 2002)
PA020004 (Mar. 1, 2002)
PA020011 (Mar. 1, 2002)
PA020013 (Mar. 1, 2002)
PA020016 (Mar. 1, 2002)
PA020027 (Mar. 1, 2002)
PA020038 (Mar. 1, 2002)
PA020041 (Mar. 1, 2002)
PA020042 (Mar. 1, 2002)
West Virginia
WV020001 (Mar. 1, 2002)
WV020002 (Mar. 1, 2002)
WV020003 (Mar. 1, 2002)
WV020006 (Mar. 1, 2002)
WV020009 (Mar. 1, 2002)
WV020010 (Mar. 1, 2002)

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TN020042 (Mar. 1, 2002)
TN020043 (Mar. 1, 2002)
TN020044 (Mar. 1, 2002)

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WI020049 (Mar. 1, 2002)
WI020050 (Mar. 1, 2002)

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Kansas
KS020008 (Mar. 1, 2002)
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NE020010 (Mar. 1, 2002)
NE020011 (Mar. 1, 2002)
NE020019 (Mar. 1, 2002)
NE020021 (Mar. 1, 2002)
NE020041 (Mar. 1, 2002)

Volume VI

None

Volume VII

California
CA020013 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
Hawaii
HI020001 (Mar. 1, 2002)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six

separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 13th day of March 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–6610 Filed 3–20–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–032)]

NASA Advisory Council, Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: The National Aeronautics and Space Administration announces an open meeting of the NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness (IOR).

DATES: Wednesday, April 16, 2003, 12 Noon–1 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7U22, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Pagel, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4621.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support the new crew and the American and Russian flight team's preparedness to accomplish the Expedition Seven mission.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting K. Lee Pagel via e-mail at *lee.pagel@nasa.gov* or by telephone at (202) 358–4621. Attendees will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–6745 Filed 3–20–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee will be held via conference call on Wednesday, April 2, 2003, from 1 p.m. to 3 p.m. The conference call will be closed to the public to allow for oral discussion of information voluntarily submitted to the Federal government in expectation of protection from disclosure as provided in the provisions of the Critical Infrastructure Information Act of 2002. This is necessary to protect information regarding vulnerabilities resulting from changing technologies and dependence upon privately operated infrastructures,.

FOR FURTHER INFORMATION CONTACT: Telephone Ms. Marilyn Witcher, (703) 607–6214, or write the Manager, National Communications System, 701 South Court House Road, Arlington, Virginia 22204–2198.

Peter Fonash,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 03–6772 Filed 3–20–03; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee will be on Thursday, May 1, 2003, from 10 a.m. to 3 p.m. The meeting will be closed to the public to allow for oral discussion of information voluntarily submitted to the Federal government in expectation of protection from disclosure as provided in the provisions of the Critical Infrstructure Information Act of 2002. This is necessary to protect information regarding vulnerabilities resulting from changing technologies and dependence upon privately oeprated infrastructures.

FOR FURTHER INFORMATION CONTACT: Telephone Ms. Marilyn Witcher, (703) 607–6214, or write the Manager, National Communications System, 701 South Court House Road, Arlington, Virginia 22204–2198.

Peter Fonash,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 03–6773 Filed 3–20–03; 8:45 am]

BILLING CODE 5001–08–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation

and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 3, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Special Projects/ Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs at the February 3, 2003 deadline.

2. *Date:* April 4, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 3, 2003 deadline.

3. *Date:* April 8, 2003.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Special Initiative for Local History, submitted to the Office of Challenge Grants at the February 3, 2003 deadline.

4. *Date:* April 10, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Special Projects/ Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs at the February 3, 2003 deadline.

5. *Date:* April 21, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2003 deadline.

6. *Date:* April 22, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2003 deadline.

7. *Date:* April 23, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2003 deadline.

8. *Date:* April 28, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2003 deadline.

9. *Date:* April 29, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education Programs at the March 1, 2003 deadline.

10. *Date:* April 30, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education Programs at the March 1, 2003 deadline.

Daniel Schneider,
Advisory Committee, Management Officer.
[FR Doc. 03–6742 Filed 3–20–03; 8:45 am]
BILLING CODE 7536–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1), License Nos. (as shown in Attachment 1), EA–03–009]

In the Matter of All Pressurized Water Reactor Licensees; Errata to Order Modifying Licenses (Effective Immediately)

On February 11, 2003, the Nuclear Regulatory Commission (NRC) issued ''Order Modifying Licenses (Effective Immediately)'' (Order), EA–03–009, to all Licensees for pressurized water reactors. The Order imposes interim inspection requirements for reactor pressure vessel (RPV) heads and associated penetration nozzles.

The Order includes a provision for Licensees to request relaxations and if appropriate for the NRC to rescind or relax requirements imposed by the Order. In anticipation of numerous requests for relaxation of the Order for inspections of specific penetration nozzles, the Order specified that the NRC staff would evaluate requests for relaxation of inspection requirements for specific penetration nozzles using its procedure for proposed alternatives to Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code pursuant to 10 CFR 50.55a, ''Codes and standards.'' To ensure that this provision may be used as intended and as it has been explained to Licensees and other stakeholders following the issuance of the Order, it is necessary to amend a procedural aspect of the Order with respect to the authority to act on requests for relaxation regarding specific nozzle penetrations. This Errata does not in any way alter any substantive provision of the Order or requirements imposed thereby on any Licensee.

Accordingly, pursuant to sections 103, 104b, 161b, 161i, 161o, 182 and 186, of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, It is hereby Ordered, Effective Immediately, that my authority to relax or rescind any of the conditions of section IV of the Order in regard to requests for relaxation associated with specific penetration nozzles has been delegated to Project Directors or higher management positions within the Division of Licensing Project Management within the Office of Nuclear Reactor Regulation.

Since this Errata makes no substantive change to the Order, Licensees are not required to submit an answer pursuant to 10 CFR 2.202. In accordance with 10 CFR 2.202, any other persons adversely affected by this Errata may submit an answer to this Errata, and Licensees and any other person adversely affected by this Errata may request a hearing on this Errata, within twenty (20) days of the date of this Errata. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Errata. Unless the answer consents to this Errata, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Errata should not

have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific plant; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Assistant General Counsel for Materials Litigation and Enforcement either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Errata and shall address the criteria set forth in 10 CFR 2.714(d).[1]

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Errata should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Errata on the ground that the Errata, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section II above shall be final twenty (20) days from the date of this Errata without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section II shall be final when the extension expires if a hearing request has not been received. *An Answer or a Request for Hearing shall not Stay the Immediate Effectiveness of this Errata.*

For the Nuclear Regulatory Commission.

Dated this 14th day of March 2003.

R. William Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

Facilities	Addressee
Beaver Valley Power Station, Units 1 and 2, Docket Nos. 50–334 and 50–412, License Nos. DPR–66 and NPF–73.	Mr. Mark B. Bezilla, Vice President, FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Post Office Box 4, Shippingport, PA 15077.
Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Docket Nos. 50–317 and 50–318, License Nos. DPR–53 and DPR–69.	Mr. P. E. Katz, Vice President, Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, 1650 Calvert Cliffs Parkway, Lusby, MD 20657–4702.
R. E. Ginna Nuclear Power Plant, Docket No. 50–244, License No. DPR–18.	Dr. Robert C. Mecredy, Vice President, Nuclear Operations, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.
Indian Point Nuclear Generating Station, Units 2 and 3, Docket Nos. 50–247 and 50–286, License Nos. DPR–26 and DPR–64.	Mr. Michael R. Kansler, Senior Vice President and Chief Operating Officer, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.
Millstone Power Station, Units 2 and 3, Docket Nos. 50–336 and 50–423, License Nos. DPR–65 and NPF–49.	Mr. J. A. Price, Site Vice President—Millstone, Dominion Nuclear Connecticut, Inc., c/o Mr. David W. Dodson, Rope Ferry Road, Waterford, CT 06385.
Salem Nuclear Generating Station, Units 1 and 2, Docket Nos. 50–272 and 50–311, License Nos. DPR–70 and DPR–75.	Mr. Harold W. Keiser, Chief Nuclear Officer & President, PSEG Nuclear LLC—X04, Post Office Box 236, Hancocks Bridge, NJ 08038.
Seabrook Station, Unit 1, Docket No. 50–443, License No. NPF–86	Mr. Mark E. Warner, Site Vice President, c/o James M. Peschel, Seabrook Station, PO Box 300, Seabrook, NH 03874.
Three Mile Island Nuclear Station, Unit 1, Docket No. 50–289, License No. DPR–50.	Mr. John L. Skolds, Chairman and Chief Executive Officer, AmerGen Energy Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
Catawba Nuclear Station, Units 1 and 2, Docket Nos. 50–413 and 50–414, License Nos. NPF–35 and NPF–52.	Mr. G. R. Peterson, Site Vice President, Catawba Nuclear Station, Duke Energy Corporation, 4800 Concord Road, York, South Carolina 29745–9635.
Crystal River Nuclear Power Plant, Docket No. 50–302, License No. DPR–72.	Mr. Dale E. Young, Vice President, Crystal River Nuclear Plant (NA1B), ATTN: Supervisor, Licensing & Regulatory Programs, 15760 W. Power Line Street, Crystal River, Florida 34428–6708.
Joseph M. Farley Nuclear Plant, Units 1 and 2, Docket Nos. 50–348 and 50–364, License Nos. NPF–2 and NPF–8.	Mr. J. B. Beasley, Vice President—Farley Project, Southern Nuclear Operating Company, Inc., Post Office Box 1295, Birmingham, Alabama 35201–1295.
Shearon Harris Nuclear Power Plant, Unit 1, Docket No. 50–400, License No. NPF–63.	Mr. James Scarola, Vice President, Shearon Harris Nuclear Power Plant, Carolina Power & Light Company, Post Office Box 165, Mail Code: Zone 1, New Hill, North Carolina 27562–0165.
William B. McGuire Nuclear Station, Units 1 and 2, Docket Nos. 50–369 and 50–370, License Nos. NPF–9 and NPF–17.	Mr. Dhiaa Jamil, Vice President, McGuire Site, Duke Energy Corporation, 12700 Hagers Ferry Road, Huntersville, NC 28078–8985.
North Anna Power Station, Units 1 and 2, Docket Nos. 50–338 and 50–339, License Nos. NPF–4 and NPF–7.	Mr. David A. Christian, Senior Vice President—Nuclear, Virginia Electric and Power Company, 5000 Dominion Blvd., Glen Allen, Virginia 23060.
Surry Power Station, Units 1 and 2, Docket Nos. 50–280 and 50–281, License Nos. DPR–32 and DPR–37	

[1] The version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please *see* 67 FR 20884, April 29, 2002.

Facilities	Addressee
Oconee Nuclear Station, Units 1, 2 and 3, Docket Nos. 50–269, 50–270 and 50–287, License Nos. DPR–38, DPR–47 and DPR–55.	Mr. Ronald A. Jones, Vice President, Oconee Site, Duke Energy Corporation, 7800 Rochester Highway, Seneca, SC 29672.
H. B. Robinson Steam Electric Plant, Unit 2, Docket No. 50–261, License No. DPR–23.	Mr. J. W. Moyer, Vice President, Carolina Power & Light Company, H. B. Robinson Steam Electric Plant Unit No. 2, 3581 West Entrance Road, Hartsville, South Carolina 29550.
St. Lucie Nuclear Plant, Units 1 and 2, Docket Nos. 50–335 and 50–389, License Nos. DPR–67 and NPF–16,.	Mr. J. A. Stall, Senior Vice President, Nuclear and Chief Nuclear Officer, Florida Power and Light Company, P.O. Box 14000, Juno Beach, Florida 33408–0420.
Turkey Point Nuclear Generating Station, Units 3 and 4, Docket Nos. 50–250 and 50–251, License Nos. DPR–31 and DPR–41	
Sequoyah Nuclear Plant, Units 1 and 2, Docket Nos. 50–327 and 50–328, License Nos. DPR–77 and DPR–79.	Mr. J. A. Scalice, Chief Nuclear Officer and Executive Vice President, Tennessee Valley Authority, 6A Lookout Place, 1101 Market Street, Chattanooga, Tennessee 37402–2801.
Watts Bar Nuclear Plant, Unit 1, Docket No. 50–390, License No. NPF–90	
Virgil C. Summer Nuclear Station, Unit 1, Docket No. 50–395, License No. NPF–12.	Mr. Stephen A. Byrne, Senior Vice President, Nuclear Operations, South Carolina Electric & Gas Company, Virgil C. Summer Nuclear Station, Post Office Box 88, Jenkinsville, South Carolina 29065.
Vogtle Electric Generating Plant, Units 1 and 2, Docket Nos. 50–424 and 50–425, License Nos. NPF–68 and NPF–81.	Mr. J. T. Gasser, Vice President—Vogtle Project, Southern Nuclear Operating Company, Inc., Post Office Box 1295, Birmingham, Alabama 35201–1295.
Braidwood Station, Units 1 and 2, Docket Nos. STN 50–456 and STN 50–457, License Nos. NPF–72 and NPF–77.	Mr. John L. Skolds, President, Exelon Nuclear, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
Byron Station, Units 1 and 2, Docket Nos. STN 50–454 and STN 50–455, License Nos. NPF–37 and NPF–66	
Donald C. Cook Nuclear Plant, Units 1 and 2, Docket Nos. 50–315 and 50–316, License Nos. DPR–58 and DPR–74.	Mr. Robert P. Powers, Senior Vice President, Indiana Michigan Power Company, Nuclear Generation Group, 500 Circle Drive, Buchanan, MI 49107.
Davis-Besse Nuclear Power Station, Unit 1, Docket No. 50–346, License No. NPF–3.	Mr. Lew W. Myers, Chief Operating Officer, FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, 5501 North State Route 2, Oak Harbor, OH 43449–9760.
Kewaunee Nuclear Power Plant, Docket No. 50–305, License No. DPR–43.	Mr. Thomas Coutu, Site Vice President and Interim Plant Manager, Kewaunee Nuclear Power Plant, Nuclear Management Company, LLC, N490 State Highway 42, Kewaunee, WI 54216.
Palisades Plant, Docket No. 50–255, License No. DPR–20	Mr. Douglas E. Cooper, Site Vice President, Palisades Nuclear Plant, 27780 Blue Star Memorial Highway, Covert, MI 49043.
Point Beach Nuclear Plant, Units 1 and 2, Docket Nos. 50–266 and 50–301, License Nos. DPR–24 and DPR–27.	Mr. Fred J. Cayia, Site Vice President, Point Beach Nuclear Plant, Nuclear Management Company, LLC, 6610 Nuclear Road, Two Rivers, WI 54241.
Prairie Island Nuclear Generating Plant, Units 1 and 2, Docket Nos. 50–282 and 50–306, License Nos. DPR–42 and DPR–60.	Mr. Mano Nazar, Site Vice President, Prairie Island Nuclear Generating Plant, Nuclear Management Company, LLC, 1717 Wakonade Drive East, Welch, MN 55089.
Arkansas Nuclear One, Units 1 and 2, Docket Nos. 50–313 and 50–368, License Nos. DPR–51 and NPF–6.	Mr. Craig G. Anderson, Vice President, Operations ANO, Entergy Operations, Inc., 1448 S. R. 333, Russellville, AR 72801.
Callaway Plant, Unit 1, Docket No. 50–483, License No. NPF–30	Mr. Garry L. Randolph, Vice President and Chief Nuclear Officer, Union Electric Company, Post Office Box 620, Fulton, MO 65251.
Comanche Peak Steam Electric Station, Units 1 and 2, Docket Nos. 50–445 and 50–446, License Nos. NPF–87 and NPF–89.	Mr. C. Lance Terry, Senior Vice President & Principal Nuclear Officer, TXU Energy, ATTN: Regulatory Affairs, P. O. Box 1002, Glen Rose, TX 76043.
Diablo Canyon Nuclear Power Plant, Units 1 and 2, Docket Nos. 50–275 and 50–323, License Nos. DPR–80 and DPR–82.	Mr. Gregory M. Rueger, Senior Vice President, Generation and Chief Nuclear Officer, Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, P. O. Box 3, Avila Beach, CA 93424.
Fort Calhoun Station, Unit 1, Docket No. 50–285, License No. DPR–40	Mr. R. T. Ridenoure, Division Manager—Nuclear Operations, Omaha Public Power District, Fort Calhoun Station FC–2–4 Adm., Post Office Box 550, Fort Calhoun, NE 68023–0550.
Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Docket Nos. STN 50–528, STN 50–529 and STN 50–530, License Nos. NPF–41, NPF–51 and NPF–74.	Mr. Gregg R. Overbeck, Senior Vice President, Nuclear, Arizona Public Service Company, P. O. Box 52034, Phoenix, AZ 85072–2034.
San Onofre Nuclear Station, Units 2 and 3, Docket Nos. 50–361 and 50–362, License Nos. NPF–10 and NPF–15.	Mr. Harold B. Ray, Executive Vice President, Southern California Edison Company, San Onofre Nuclear Generating Station, P.O. Box 128, San Clemente, CA 92674–0128.
South Texas Project Electric Generating, Station, Units 1 and 2, Docket Nos. 50–498 and 50–499, License Nos. NPF–76 and NPF–80.	Mr. William T. Cottle, President and Chief Executive Officer, STP Nuclear Operating Company, South Texas Project Electric Generating Station, P. O. Box 289, Wadsworth, TX 77483.
Waterford Steam Electric Generating Station, Unit 3, Docket No. 50–382, License No. NPF–38.	Mr. Joseph E. Venable, Vice President Operations, Entergy Operations, Inc., 17265 River Road, Killona, LA 70066–0751.
Wolf Creek Generating Station, Unit 1, Docket No. 50–482, License No. NPF–42.	Mr. Rick A. Muench, President and Chief Executive Officer, Wolf Creek Nuclear Operating Corporation, Post Office Box 411, Burlington, KS 66839.

[FR Doc. 03–6807 Filed 3–20–03; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 10–12, 2003, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 20, 2002 (67 FR 70094).

Thursday, April 10, 2003

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:45 a.m.: Draft Finial Risk-Informed Revisions to 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final risk-informed revisions to 10 CFR 50.44.

10 a.m.–12:30 p.m.: Draft Final Regulatory Guide, DG–1122, ''Determining the Technical Adequacy of PRA Results for Risk-Informed Activities'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final version of DG–1122, including resolution of public comments.

1:30 p.m.–3:15 p.m.: Control Room Habitability (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding four draft regulatory guides concerning control room habitability, dose assessment, meteorological effects, and in-leakage testing as well as a related draft generic letter.

3:30 p.m.–4:45 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss the following topics scheduled for the ACRS meeting with the NRC Commissioners between 9–11 a.m. on April 11, 2003: Overview by the ACRS Chairman, Advanced Reactor Designs, Pressurized Thermal Shock Technical Basis Reevaluation Project, and ACRS Report on the NRC Safety Research Program.

5 p.m.–7:15 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports on Advancement of PRA Technology to Improve Risk-Informed Decisionmaking, and Insights/Safety Culture.

Friday, April 11, 2003

8:30 a.m.–8:40 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

9 a.m.–11 a.m.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North to discuss items of mutual interest noted above.

11:15 a.m.–12:15 p.m.: Significant Recent Operating Events (Open)—The Subcommittee Chairman will discuss significant recent operating events.

1:15 p.m.–2:15 p.m.: Refresher Training Course for Members (Open)—Representatives of the Offices of the General Counsel, Administration, and Security will provide a refresher training course for the members regarding the ethics, conflict-of-interest, travel , and security requirements.

2:15 p.m.–2:30 p.m.: Subcommittee Report on the Interim Review of the License Renewal Application for the St. Lucie Nuclear Power Plant (Open)—Report by the Chairman of the ACRS Subcommittee on Plant License Renewal regarding the Subcommittee's review of the St. Lucie license renewal application and the staff's initial Safety Evaluation Report.

2:30 p.m.–2:45 p.m.: Subcommittee Report on AP1000 Thermal-Hydraulic Matters (Open)—Report by the Chairman of the ACRS Subcommittee on Thermal-Hydraulic Phenomena regarding the Subcommittee's review of the thermal-hydraulic matters associated with the AP1000 passive plant design.

3 p.m.–3:45 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

3:45 p.m.–4 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

4 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, April 12, 2003

8:30 a.m.–1 p.m.: Proposed ACRS Reports (Open)—The Committee will continue to discuss proposed ACRS reports.

1:00 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public

Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 17, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–6806 Filed 3–20–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF OPEN MEETING: Additional Meeting.

An additional Closed Meeting was held on Monday, March 17, 2003 at 6 p.m. Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting was: Institution of an injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 19, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–6975 Filed 3–19–03; 4:02 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Healthsouth Corporation; Order of Suspension of Trading

March 19, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HealthSouth Corporation (''HealthSouth'') because of questions regarding the accuracy of publicly disseminated information by HealthSouth and others concerning, among other things: (1) The company's earnings and assets, and (2) the company's current financial condition.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, *it is ordered,* pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. E.S.T., March 19, 2003 through 11:59 p.m. E.S.T., on March 20, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6911 Filed 3–19–03; 11:58 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47508; File No. SR–CBOE–2003–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Incorporated To Establish a Four-Month Pilot Program Implementing the Market Share Incentive Plan

March 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4[2] thereunder, notice is hereby given that on February 19, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish a four-month pilot program that makes a change to its Fee Schedule in order to implement a Market Share Incentive Plan. The text of the proposed rule change, showing the proposed fee schedule, is available at the principal offices of the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes a four-month pilot program called the Market Share Incentive Plan (''MIP''). The MIP, which commenced on March 1, 2003, and will continue through June 30, 2003, will initially apply to the 300 CBOE equity option classes with the largest total trading volume nationwide (the ''top 300 classes'')[3] as well as options on the NASDAQ 100® Index Tracking Stock (''QQQ'') (collectively, the ''pilot MIP classes.'') The MIP is designed to provide an incentive to CBOE Designated Primary Market-Makers (''DPMs'') and market-makers to increase CBOE's share of national volume in the pilot MIP classes by continually maintaining highly competitive quotes with deeper, more liquid markets and tighter spreads.

The MIP will do this by providing two types of fee refunds to DPMs and market-makers who achieve the following specified market share thresholds in the pilot MIP classes.

[3] The top 300 classes represent approximately 85% of total CBOE equity option contract volume. The CBOE believes it would not be practical to include the remaining equity option classes in the MIP pilot program, given the swings in market share that can occur in such lower volume classes.

a. Maintaining CBOE Market Share At or Above 25%

DPMs and market makers in the pilot MIP classes who maintain a CBOE market share of 25% in those classes in a particular month will receive a transaction fee refund of $0.01 per contract for their transactions in those classes during that month. The refund per contract will increase by $0.01 for each 1% increase in CBOE market share above 25%, up to a maximum of a $0.16 per contract refund for a 40% CBOE market share, as set forth in the following table:

TABLE I.—PER CONTRACT CREDIT FOR MAINTAINING 25% OR BETTER CBOE MARKET SHARE

Market share (percent)	Credit per MM contract
25.0	$0.01
26.0	0.02
27.0	0.03
28.0	0.04
29.0	0.05
30.0	0.06
31.0	0.07
32.0	0.08
33.0	0.09
34.0	0.10
35.0	0.11
36.0	0.12
37.0	0.13
38.0	0.14
39.0	0.15
40.0	0.16

b. Increasing CBOE Market Share

Additionally, where the DPM and market makers in a pilot MIP class succeed in increasing the CBOE monthly market share in that class by 1% over the prior six-month rolling average CBOE market share for the class, the DPM and market-makers will receive a $0.01 per contract refund in their transaction fees in that class for that month. The refund per contract will increase by $0.01 for each additional 1% increase in CBOE market share over the prior six-month rolling average up to a maximum of a $0.08 per contract refund for an 8% increase in CBOE market share, as set forth in the following table:

TABLE II.—PER CONTRACT CREDIT FOR INCREASING MARKET SHARE

Market share increase (percent)	Credit per MM contract
1.0	$0.01
2.0	0.02
3.0	0.03
4.0	0.04
5.0	0.05
6.0	0.06
7.0	0.07
8.0	0.08

c. General Provisions

As is customary with the CBOE's billing practices, MIP refunds will be provided after the close of a given month. At the end of each month, CBOE will calculate the market share of each option class and then send a credit through to each clearing firm, which will then credit individual market maker and DPM accounts. All market makers and DPMs will be provided with reports showing the total credit they received along with details supporting CBOE's calculations. In no case will the monthly aggregate fee refunds under the MIP program in any option class exceed $0.24 per contract, which is the current total of transaction and trade match fees currently paid by DPMs and market-makers.

The MIP will be funded by discontinuing the existing Prospective Fee Reduction Program [4] (''Program'') for all equity as well as the QQQ option classes during the same time period that the MIP is in effect.[5] The current Prospective Fee Reduction Program will remain in effect for all option classes other than the equity and the QQQ option classes.

According to the CBOE, the objective of the MIP program is similar to those of so-called ''shortfall fee'' programs [6] that became effective upon filing and were published by the Commission for several other options exchanges.[7] However, the CBOE believes that unlike ''shortfall fee'' programs, which penalize members when they fall below established market share expectations, the CBOE will use the MIP to provide positive incentives for members to increase their market share by continually maintaining highly competitive quotes.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act [8] in general, and furthers the objectives of section 6(b)(4) of the Act [9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in response to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [10] and rule 19b–4(f)(2)[11] thereunder because it establishes or changes a due, fee, or other charge imposed by the CBOE. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

[4] For the current CBOE fiscal year, the Program provides that if at the end of the second or third quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's market-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The temporary discontinuation of the Program has taken effect as part of this proposed rule change. Telephone conversation between Christopher Hill, Attorney, CBOE, and Cyndi Rodriguez, Special Counsel, Division of Market Regulation (''Division''), Commission, on March 13, 2003.

[5] The Commission notes that the temporary discontinuation of the Program for the pilot MIP classes has taken effect as part of this proposed rule change.

[6] The CBOE believes that the goal of such ''shortfall fee'' programs is to encourage trading volume on the exchange. Telephone conversation among Christopher Hill, Attorney, CBOE and Cyndi Rodriguez, Special Counsel, Division, and Tim Fox, Attorney, Division, Commission, on March 6, 2003.

[7] *See* Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002) (SR–PCX–2001–51); Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR–PHLX–00–07).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–06 and should be submitted by April 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6828 Filed 3–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47505; File No. SR–CHX–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Execution of Odd Lot Orders

March 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2003, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of CHX Article XXXI, Odd Lots and Odd-Lot Dealers, Dual System, rule 9, Execution of Odd-Lot Orders During the Primary Session, which governs execution of odd-lot orders on the CHX. Specifically, the CHX seeks to add a provision that would permit inclusion of 100-share primary market quotations in the CHX's calculation of the adjusted Intermarket Trading System best bid or offer (''ITS BBO''). The text of the proposed rule change is below. Proposed new language is in italics.

Chicago Stock Exchange Rules

Article XXXI

Odd Lots and Odd-Lot Dealers, Dual System

* * * * *

Rule 9. Execution of Odd-Lot Orders During the Primary Trading Session

* * * * *

(b) Nasdaq/NM Securities and Dually Traded Issues. As to Nasdaq/NM Securities, market orders will be accepted for execution as an odd lot based on the best bid disseminated pursuant to SEC rule 11Ac1–1 on a sell order or the best offer disseminated pursuant to SEC rule 11Ac1–1 on a buy order in effect at the time the order is presented at the specialist post, provided the order is for a number of shares less than the full lot in said stock. Any market order to purchase or sell a Dual Trading System issue in an odd-lot amount, which is transmitted for execution to an odd-lot dealer or its agent shall be executed, unless otherwise provided herein, at the price of the adjusted ITS bid (in the case of an order to sell) or adjusted ITS offer (in the case of an order to purchase) in the security at the time the order is received by the Exchange system designated to process odd-lot orders (the ''odd lot system'').

* * * * *

(c) General

* * * * *

(vi) In instances in which quotation information is not available, *e.g.*, the quotation collection or dissemination facilities are inoperable, or the primary market in the security has been determined to be in non-firm mode (as referenced in Interpretation and Policy .01), standard, regular way odd-lot market orders shall be executed based on the next primary market round lot sale or shall be executed by the member organization designated by the Exchange as the odd-lot dealer for the issue, at a price deemed appropriate under prevailing market conditions.

* * * * *

Interpretations and Policies:

.01 Adjusted Best Bid or Offer. For purposes of paragraph (b) of this rule, the terms ''adjusted ITS best bid'' and ''adjusted ITS best offer'' for a security shall mean the highest bid and lowest offer, respectively, disseminated by (i) the Exchange or (ii) a market center participating in the Intermarket Trading System; provided, however, that the bid and offer in another ITS market center will be considered in determining the adjusted ITS best bid or adjusted ITS best offer in a security only if (a) the security is included in ITS in that market center; (b) the size of the quotation is greater than 100 shares*; provided, however, that 100-share quotations by the primary market may be considered;* (c) the bid or offer is no more than $.25 away from the bid or offer disseminated by the primary market; (d) the quotation conforms to Exchange requirements regarding minimum trading variations; (e) the quotation does not result in a locked market; (f) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information; and (g) the bid or offer is ''firm,'' that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of rule 11Ac1–1 pursuant to the ''unusual market'' exception of paragraph (b)(3) of rule 11Ac1–1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would permit inclusion of 100-share primary market quotations in the CHX's calculation of the adjusted ITS BBO. The Commission previously approved a change to CHX Article XXXI, rule 9, based on rule 124(A) of the New York Stock Exchange.[3] The rule change

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46657 (October 11, 2002), 67 FR 64679 (October 21, 2002).

provided for execution of odd-lot orders at the adjusted ITS BBO. Under the version of the rule that was approved, the adjusted ITS BBO was defined to exclude the quotation of another ITS market center if the quotation is 100 shares or less.[4]

In testing the systems functionality that would execute odd-lot orders at the adjusted ITS BBO, the CHX determined that exclusion of 100-share quotations disseminated by the primary market in an issue could result in inferior executions on the CHX, a result not fully anticipated. Accordingly, the CHX seeks approval to modify Interpretation and Policy .01, in order to permit inclusion of 100-share primary market quotations when calculating the adjusted ITS BBO. The CHX believes that the proposed rule change is amply warranted, as it will in many cases result in a superior execution price for the investor.

Because the proposed rule change will modify the execution system change previously approved by the Commission, the CHX has disengaged the adjusted ITS BBO execution algorithm until such time as the algorithm can be reprogrammed to include primary market 100-share quotations.[5] The CHX estimates that this reprogramming can be concluded within a relatively short time frame, in less than 30 days. If the reprogramming effort is not concluded within this 30-day period, the CHX represents that it will seek further relief from the Commission.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b) of the Act,[6] generally, and section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

[4] *See* Article XXXI, rule 9, Interpretation and Policy .01.

[5] While the adjusted BBO algorithm is being reprogrammed, the CHX will execute odd-lot orders under the previous version of Article XXXI, rule 9, which required execution of such orders at the national best bid or offer disseminated pursuant to SEC rule 11 Ac1–1, 17 CFR 240.11Ac1–1.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposal effects a change in an existing order-entry or trading system of the Exchange that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, it has become effective pursuant to section 19(b)(3)(A) of the Act [8] and subparagraph (f)(5) of rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2003–09 and should be submitted by April 11, 2003.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6829 Filed 3–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47494; File No. SR–NSCC–2002–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Modification of Fixed Income Transaction System in Preparation for the Implementation of Real Time Trade Processing

March 13, 2003.

On November 5, 2002, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] proposed rule change File No. SR–NSCC–2002–10. Notice of the proposal was published in the **Federal Register** on January 31, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC will modify its Trade Comparison Service rules to enhance its Fixed Income Transaction System (''FITS'') in order to begin the move to real time trade matching processing (''RTTM'') for fixed income securities that are eligible for processing by NSCC.

RTTM was implemented by the Government Securities Clearing Corporation (''GSCC''), an NSCC affiliate, in the fourth quarter of 2000 for the processing of government securities. It was designed with a vision to also use the platform for other fixed income securities. Once RTTM was deployed for government securities, GSCC and MBS Clearing Corporation (''MBSCC'') worked together to adapt RTTM to support the requirements of mortgage-backed securities. MBSCC implemented RTTM on September 27, 2002. NSCC believes that the next logical extension of RTTM is to further adapt it for fixed income securities that are eligible for processing by NSCC. NSCC currently

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47206 (Jan. 16, 2003), 68 FR 5067 (Jan. 31, 2003).

plans to implement RTTM for corporate bonds, municipal bonds, and Unitary Investment Trusts (''UIT'') in the fourth quarter of 2003. RTTM will eventually replace NSCC's current FITS.

One of NSCC's main objectives will be to ensure an orderly transition to RTTM. In order to prepare participants for the new RTTM functionality, NSCC proposes that certain modifications be made to FITS during March 2003. These modifications will enable participants to become familiar with RTTM-type processing. In addition, some lesser-utilized FITS functionality that will not be incorporated into RTTM will be eliminated from FITS. The modifications have been endorsed by the RTTM Working Group, which consists of representatives of participants that hold key positions in The Bond Market Association, the Securities Industry Association, and the Regional Municipal Operations Association.

The following is a summary of the modifications to FITS:

- FITS will automatically compare a trade even if the counterparties submit data on the trade in different pieces, a process known as ''trade summarization.'' [3]
- Except for trades where the settlement date is the same business day as or the business day after the trade date,[4] FITS will be modified to accept (instead of reject) trade submissions with a contractual settlement date of the day of input or of prior dates and will automatically assign a settlement date of the next business day to the trades.
- Corporate bond trades in quantities of other than multiples of a thousand (round-lots) must be divided into separate data submissions of the round lot quantity and the odd-lot quantity (multiples of less than one thousand).

The following is a summary of functions that NSCC proposes to eliminate from FITS:

- Demand As Of processing.[5]
- One Sided Deletes for compared, secondary market municipal security trades. In order to delete these trades, both counterparties will be required to submit Withholds that match in all respects.[6]
- Trade Submit and Carry Forward Totals will not be reported on the Supplemental and Added Trade Contracts.
- Regular Way Extended Settlement Carry Forward Totals.[7]

Along with these changes, NSCC will change the current cutoff time for trade date submission from midnight to 8 p.m. and will require the submission of certain additional trade data.[8] Finally, NSCC will make a technical correction to the use of the term ''business day'' in its rules. During the preparation of this filing, NSCC realized that the use of upper and lower case letters for the term is inconsistent in the rules. In order to carry out the intention of the drafters of the rules, NSCC will use the term ''business day'' (lower case) throughout its rules as is specified in the definition of that term in NSCC Rule 1–1.

II. Discussion

The Commission finds that NSCC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F)[9] of the Act. Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that NSCC's rule change meets this requirement because it will enable NSCC to prepare its participants for the new RTTM functionality that will eventually enable NSCC to process trades in a more efficient and timely manner. By effecting an orderly transition to RTTM, NSCC's participants should become familiar with RTTM-type processing and thereby enable NSCC to continue to promote the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2002–10) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6830 Filed 3–20–03; 8:45 am]

BILLING CODE 8010–01–P

[3] For example, Firm A submits one trade for $30 million and Firm B ''breaks down'' the trade into three $10 million pieces. Alternatively, Firm A and Firm B may execute five separate trades each worth $10 million. Firm A submits each trade separately while Firm B ''bunches'' the five trades into one $50 million piece. In both of these examples, the trades will be compared.

[4] NSCC will continue to reject trades where the settlement date is the same business day as or the business day after the trade date regardless of the date of submission.

[5] The As Of capability will still be available to compare trades that do not initially compare in FITS. The As Of capability requires the submission by each counterparty of data that matches in all respects whereas the Demand As Of capability permitted a trade to be ''force compared'' on the submitter's terms even it the counterparty did not respond.

[6] One Sided Deletes functionality will be retained for syndicate takedown transactions and for uncompared municipal bond, corporate bond, and UIT trades.

[7] Carry Forward Totals will be retained on New Issue Contracts.

[8] The details for these technical changes can be found in NSCC's Important Notice No. A5487 (October 7, 2002).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3482]

State of Kentucky

As a result of the President's major disaster declaration on March 14, 2003, I find that Breathitt, Carter, Clarke, Fayette, Floyd, Greenup, Johnson, Knott, Leslie, Letcher, Lewis, Martin, Owsley, Perry and Pike Counties in the State of Kentucky constitute a disaster area due to damages caused by severe winter ice and snow storms, heavy rain, flooding, tornadoes, and mud and rock slides occurring on February 15 through February 26, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 13, 2003, and for economic injury until the close of business on December 15, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bell, Bourbon, Boyd, Clay, Elliott, Estill, Fleming, Harlan, Jackson, Jessamine, Lawrence, Lee, Madison, Magoffin, Mason, Menifee, Montgomery, Morgan, Powell, Rowan, Scott, Wolfe and Woodford in the State of Kentucky; Adams, Lawrence and Scioto counties in the State of Ohio; Buchanan, Dickenson and Wise counties in the Commonwealth of Virginia; and Mingo and Wayne counties in the State of West Virginia.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 5.875%

Homeowners without credit available elsewhere: 2.937%
Businesses with credit available elsewhere: 6.378%
Businesses and non-profit organizations without credit available elsewhere: 3.189%
Others (including non-profit organizations) with credit available elsewhere: 5.500%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 3.189%

The number assigned to this disaster for physical damage is 348211. For economic injury the number is 9U4800 for Kentucky; 9U4900 for Ohio; 9U5000 for Virginia; and 9U5100 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 14, 2003.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–6766 Filed 3–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3481]

State of Ohio

As a result of the President's major disaster declaration on March 14, 2003, I find that Adams, Jackson, Lawrence, Pike and Scioto Counties in the State of Ohio constitute a disaster area due to damages caused by a severe winter storm and record snow occurring on February 14, 2003, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 13, 2003, and for economic injury until the close of business on December 15, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Brown, Gallia, Highland, Ross and Vinton in the State of Ohio; Boyd, Greenup, Lewis and Mason counties in the State of Kentucky; and Cabell and Wayne counties in the State of West Virginia.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 5.875%
Homeowners without credit available elsewhere: 2.937%
Businesses with credit available elsewhere: 6.378%
Businesses and non-profit organizations without credit available elsewhere: 3.189%
Others (including non-profit organizations) with credit available elsewhere: 5.500%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 3.189%

The number assigned to this disaster for physical damage is 348111. For economic injury the number is 9U4500 for Ohio; 9U4600 for Kentucky; and 9U4700 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 14, 2003.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–6768 Filed 3–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3483]

State of West Virginia

As a result of the President's major disaster declaration on March 14, 2003, I find that Cabell, Jackson, Kanawha, Lincoln, Mingo, Roane and Wayne Counties in the State of West Virginia constitute a disaster area due to damages caused by a severe winter storm, record snow, heavy rains, flooding and landslides occurring on February 16, 2003, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 13, 2003, and for economic injury until the close of business on December 15, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Calhoun, Clay, Fayette, Logan, Mason, McDowell, Nicholas, Putnam, Raleigh, Wirt, Wood and Wyoming in the State of West Virginia; Gallia, Lawrence and Meigs counties in the State of Ohio; Boyd, Lawrence, Martin and Pike counties in the State of Kentucky; and Buchanan county in the Commonwealth of Virginia.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere: 5.875%
Homeowners without credit available elsewhere: 2.937%
Businesses with credit available elsewhere: 6.378%
Businesses and non-profit organizations without credit available elsewhere: 3.189%
Others (including non-profit organizations) with credit available elsewhere: 5.500%

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere: 3.189%

The number assigned to this disaster for physical damage is 348311. For economic injury the number is 9U5200 for West Virginia; 9U5300 for Ohio; 9U5400 for Kentucky; and 9U5500 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 17, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–6767 Filed 3–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance To Provide Counseling, Technical Assistance and Long Term Training to Small Business Owners and Those Interested in Starting a Small Business

AGENCY: Small Business Administration.

ACTION: SBDC 2003 Program Announcement for CY 2003.

SUMMARY: The Small Business Administration plans to issue a supplemental SBDC Program Announcement for CY 2003 to invite applicants from Institutions of Higher Education and Women's Business Centers to establish, manage, and oversee a Small Business Development Center (SBDC) Network in one of the areas corresponding to the areas served by each of the SBA District Offices in State of California.

The authorizing legislation is section 21 of the Small Business Act, (15 U.S.C. 648). SBA's California District Offices will hold bidders conferences according to the following schedule:

Sacramento District Office: April 22, 2003.
San Francisco District Office: April 22, 2003.

Fresno District Office: April 22, 2003.

Los Angeles District Office: April 24, 2003.

Santa Ana District Office: April 23, 2003.

San Diego District Office: April 24, 2004.

SBA's District Office(s) must receive applications/proposals by June 1, 2003.

SBA will select the applicants competitively. The successful applicant will receive an award to provide long term training, counseling and technical assistance to business persons who want to start or expand a small business.

The applicant must submit a six month plan to finish CY 2003 and an additional one year option plan for 2004 that describes the network, sources of match, training and technical assistance activities. Award recipients must provide non-Federal matching funds, *i.e.,* one-non Federal dollar for each Federal dollar for the project-year. At least half of the matching requirement must be in cash. The remainder may be in-kind or waived indirect cost.

DATES: SBA will mail program announcements to interested parties, immediately, upon request. The opening date will be March 20, 2003.

FOR FURTHER INFORMATION CONTACT:

R. MARK QUINN, District Director, U.S. Small Business Administration, 455 Market Street, 6th Floor, San Francisco, CA 94105–2445, (415) 744–8474

MS. SANDRA SUTTON, District Director, U.S. Small Business Administration, 200 West Santa Ana Boulevard, Suite 700, Santa Ana, CA 92701, (714) 550–7420

MR. CARLOS G. MENDOZA, District Director, U.S. Small Business Administration, 2719 North Air Fresno Drive, Suite 200, Fresno, CA 93727–1547, (559) 487–5441

MR. ALBERTO G. ALVARADO, District Director, U.S Small Business Administration, 330 North Brand Boulevard, Suite 1200, Glendale, CA 91203–2304, (818) 552–3201

MR. DARPHUS J. O'NEAL, District Director, U.S. Small Business Administration, 650 Capital Mall, Suite 7–500, Sacramento, CA 95814–4708, (916) 930–3715

MR. GEORGE P. CHANDLER, JR., District Director, U.S. Small Business Administration, 550 West ''C'' Street, Suite 550, San Diego, CA 92101–3500, (619) 557–7250

or Tom Mueller, Deputy Associate Administrator for Small Business Development Centers, at (202) 205–7301.

Johnnie L. Albertson,

Associate Administrator for Small Business Development Centers.

[FR Doc. 03–6785 Filed 3–20–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4319]

Culturally Significant Objects Imported for Exhibition Determinations: ''Antoine Houdon (1740–1828): Sculptor of the Enlightenment''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''Antoine Houdon (1740–1828): Sculptor of the Enlightenment'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about May 4, 2003, to on or about September 7, 2003, The J. Paul Getty Museum, Los Angeles, California, from on or about November 4, 2003, to on or about January 25, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: March 14, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–6837 Filed 3–20–03; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 4320]

Culturally Significant Objects Imported for Exhibition Determinations: ''Isamu Noguchi and Modern Japanese Ceramics''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Isamu Noguchi and Modern Japanese Ceramics,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about May 3, 2003, to on or about September 7, 2003; Japan Society Gallery, New York, NY, from on or about October 9, 2003, to on or about January 11, 2004; Japanese American National Museum, Los Angeles, CA, from on or about February 7, 2004, to on or about May 30, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 14, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–6838 Filed 3–20–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Roswell Industrial Air Center, Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Roswell Industrial Air Center under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dennis B. Ybarra, Air Center Manager of Roswell Industrial Air Center at the following address: Roswell Industrial Air Center, 1 Jerry Smith Circle, Roswell, NM 88201.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Roswell Industrial Air Center under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 11, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 8, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: October 1, 2003.

Proposed charge expiration date: December 1, 2008.

Total estimated PFC revenue: $267,460.

PFC application number: 03–02–C–00–ROW.

Brief description of proposed project(s):

Projects To Impose and Use PFC'S

1. Reconstruct Runway 17/35.
2. Construct ARFF Perimeter Roads.
3. Airfield Safety Improvements.
4. Install PAPI and REIL.
5. Upgrade Runway 17/35 Shoulders.
6. PFC Administrative Costs.

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Roswell Industrial Air Center.

Issued in Fort Worth, Texas on March 12, 2003.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 03–6751 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 2003–14683]

Request for Clearance of a New Information Collection: Information on Tribal Government Transportation Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of FHWA to request the Office of Management and Budget's (OMB) approval for a new information collection identified below under Supplementary Information. The collection involves information on Tribal governments' transportation programs. The information to be collected will be used for evaluating tribal transportation programs and identifying best practices.

DATES: Please submit comments on or before May 20, 2003.

ADDRESSES: You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493–2251; or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number in this notice's heading. All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you desire a receipt you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Penney, (202) 366–2698, Office of Planning, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Information on Tribal Government Transportation Programs.

Background: FHWA proposes to fund a project through the National Cooperative Highway Research Program Synthesis project. The project goal is to gather information on tribal

governments' transportation programs. The information will include funding information, staffing, and administration of transportation projects and programs. Information will also be requested of tribal governments on cooperative projects with state and local governments.

The information will be used to prepare a summary of how tribal transportation programs are funded and staffed and how tribal governments administer programs with the Bureau of Indian Affairs, FHWA, and state and local governments. Information will be evaluated and best practices will be identified. The information will be shared with tribal governments and states for their use in developing and enhancing effective transportation programs for tribal governments.

Respondents: 100 tribal government transportation staff.

Frequency: The information will be collected one time for purposes of the synthesis study.

Estimated Average Burden per Response: The estimated average reporting burden per response is 2 hours.

Estimated Total Annual Burden Hours: The estimated average burden is 2 hours per respondent. The FHWA goal is to get information from 100 tribal governments as minimum. The estimated total annual burden is 200 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http:www.access.gpo.gov/nara.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 17, 2003.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 03–6748 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wayne County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is reissuing this notice (originally published March 13, 2002) to advise the public that an environmental impact statement (EIS) will be prepared for proposed intermodal freight terminal(s) in Wayne County and/or Oakland Counties, Michigan. This Notice revises the published Notice of Intent of march 13, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Kirschensteiner, Assistant Division Administrator, Federal Highway Administration, 315 West Allegan Street, Room 207, Lansing, Michigan 48933, Telephone: (517) 702–1835, or Ms. Geralyn Ayers, Supervisor, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing Michigan 48909, Telephone: (517) 373–2227.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, will prepare an environmental impact statement (EIS) for a proposed project to develop existing individual intermodal terminals or a complex of terminals operated by several railroads to provide consolidated intermodal freight service to business and industry. The project could include roadway and rail improvements to the existing terminal sites, known as the Detroit-Livernois Yard, CP Expressway, CP Oak, and CN Moterm. Improvements are considered necessary to meet the future need for improved intermodal efficiencies regionally and on a national scale. The purpose of the project is to support the economic competitiveness of southeastern Michigan and the state of Michigan by improving freight transportation opportunities and efficiencies for business and industry.

Existing intermodal rail terminals are generally located as follows: (a) The Detroit-Livernois Yard owned/operated by CSX and Norfolk Southern Railroads and located west of Livernois Avenue and south of John Kronk Street, in Wayne County; (b) the CP (Canadian Pacific)—Expressway, east of I–75 and south of Michigan Avenue, behind the Michigan Central Depot, in Wayne County; (c) the CP (Canadian Pacific)—Oak, in the northwest quadrant of the interchange of I–96 with the Southfield Freeway, in Wayne County; (d) the CN (Canadian National)—Moterm, north of 8 Mile Road and east of Woodward Avenue, in Oakland County; and, (e) the NS (Norfolk Southern) intermodal terminals in Southwest Detroit and Melvindale known as NS Delray and NS Triple Crown, respectively. Norfolk Southern Railroad intends to consolidate its intermodal activity at these last two terminals into the Detroit-Livernois Yard, leaving that as the only NS intermodal terminal location for analysis in the Detroit Intermodal Freight Terminal Project. Mazda has an intermodal terminal at Flat Rock in Wayne County, which is not part of this project because it is not available for non-Mazda, commercial business purposes.

Alternatives under consideration include: (1) Taking no action, which involves the affected railroads mentioned above, proceeding with improvements and developments on the railroads' own schedule to meet their current intermodal market demands; (2) improving/expanding existing intermodal terminals (a through d, mentioned above) at their current locations; and (3) consolidation of regional intermodal operations at the Detroit-Livernois Yard. Alternative 3 is to be a refinement of the concept identified as Rail Strategy 3 in the Detroit Intermodal Freight Terminal Project Feasibility Study, Technical Report No. 4. This alternative was the focus of the Notice of Intent published March 13, 2002, that notice being hereby revised. The draft EIS will describe alternatives for improving intermodal activity in Southwest Michigan including those that were considered during the Feasibility Study of the Detroit Intermodal Freight Terminal Project. Those alternatives considered prudent and feasible will be studied further,.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously

expressed or are known to have an interest in this proposal.

A series of public meetings were held during the Feasibility Study phase (2001) on March 13, April 24, May 23–24, July 25–26, October 24–25, and December 13, 2001. An additional public meeting was held on July 11, 2002 initiating the NEPA process after the initial March 13, 2002 Notice of Intent. An early scoping meeting for resource agencies was held September 19, 2002. A second scoping meeting for resource agencies is anticipated, but not yet scheduled. Other public meetings and a public hearing are planned. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available prior to the formal public hearing for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: March 13, 2003.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 03–6836 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on October 1, 2002 (67 FR 61723 - 61724).

DATES: Comments must be submitted on or before April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath, National Highway Traffic Safety Administration, Office of Technology and Information Management, 202–366–1566. 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: Designation of Agents.

OMB Number: 2127—0040.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (foreign manufacturers). Every manufacturer offering a motor vehicle or item of motor vehicle equipment for importation into the United States is statutorily required to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of the manufacturer. (49 U.S.C. 30164) These designations are required to be filed with NHTSA. NHTSA needs this information in case it needs to advise a foreign manufacturer of a safety related defect in its products so that the manufacturer can, in turn, notify purchasers and correct the defeat. This information also enables NHTSA to serve a foreign manufacturer with all administrative and judicial processes, notices, orders, decisions and requirements.

Estimated Burden Hours: 70.

Number of Respondents: 70.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 14, 2003.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 03–6752 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on July 16, 2002 (67 FR 46701–46702).

DATES: Comments must be submitted on or before April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Marvin Levy, Ph.D. at the National Highway Traffic Safety Administration, Office of Research and Technology (NTS–131), 202–366–5597, 400 Seventh Street, SW., Room 5319, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration.

Title: National and State Surveys of Alcohol Targets of Opportunity.

OMB Number: 2127—New.

Type of Request: New collection.

Abstract: Recent data show an increase in alcohol-related crashes. In 1999, 16,572 persons were killed in alcohol-related crashes; in 2000, it rose to 17,380 and for 2001, it rose again to 17,448 deaths. Based on this alarming trend, the NHTSA Administrator has made it an agency goal to reduce the death rate, from 0.63 to 0.53 deaths per 100-million vehicle miles traveled. To further this goal, during the next few years, NHTSA will be supporting programmatic efforts at the State and local level that are aimed at substantially reducing alcohol-related

crashes and injuries. This data collection supports NHTSA's programmatic efforts and involves twice-yearly National alcohol enforcement and publicity mobilizations that focus on States having the highest fatality rates and/or number of alcohol-related fatalities.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 2,167 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 14, 2003.

Marilena Amoni,

Associate Administrator, Program Development and Delivery.

[FR Doc. 03–6753 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14682]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 17, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

Annex A

Nonconforming Motor Vehicles Decided to be Eligible for Importation

1. Docket No. NHTSA–2002–14087

Nonconforming Vehicle: 2002 Moto Guzzi California EV motorcycles.

Substantially similar U.S.-certified vehicle: 2002 Moto Guzzi California EV motorcycles.

Notice of Petition Published at: 68 FR 2396 (January 16, 2003).

Vehicle Eligibility Number: VSP–403.

2. Docket No. NHTSA–2002–14088

Nonconforming Vehicles: 1994 Jeep Grand Cherokee multipurpose passenger vehicles.

Substantially similar U.S.-certified vehicles: 1994 Jeep Grand Cherokee multipurpose passenger vehicles.

Notice of Petition Published at: 68 FR 2394 (January 16, 2003).

Vehicle Eligibility Number: VSP–404.

[FR Doc. 03–6747 Filed 3–20–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 21, 2003, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0037.

Form Number: TFS 5135.

Type of Review: Extension.

Title: Voucher for Payment of Awards.

Description: Awards certified to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to awardholders showing payments due. Awardholders sign vouchers certifying that he/she is entitled to payment. Executed vouchers are used as basis for payment.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,400.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 700 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–6826 Filed 3–20–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 12, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 21, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1503.

Revenue Procedure Number: Revenue Procedure 96–53.

Type of Review: Extension.

Title: Section 482—Allocations Between Related Parties.

Description: The information requested in section 4.02, 5, 8.02, 9, 11.01, 11.02(1), 11.04, 11.07 and 11.08 is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 160.

Estimated Burden Hours Per Respondent/Recordkeeper: 32 hours, 49 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 5,250 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service,Room 6411–03,1111 Constitution Avenue, NW.,Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget,Room 10235, New Executive Office Building,Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–6827 Filed 3–20–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8886

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8886, Reportable Transaction Disclosure Statement.

DATES: Written comments should be received on or before May 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reportable Transaction Disclosure Statement.

OMB Number: 1545–1800.

Form Number: 8886.

Abstract: Regulation section 1.6011–4 requires certain taxpayers to disclose reportable transactions in which they directly or indirectly participated.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 8 hours, 14 minutes.

Estimated Total Annual Burden Hours: 4,115.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–6856 Filed 3–20–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0554]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested for approval of the revisions of VA Form 10–0361 series and to include several new forms to comply with Public Law 107–95. Public Law 107–95 re-established VA's Homeless Providers Grant and Per Diem Program. The law mandated that three new grant programs be created for homeless veterans. VA Form 10–0361 has been revised to reflect the changes mandated by the new public law. Several new forms were created to implement the provision of the statute.

DATES: Comments must be submitted on or before March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0554''.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to ''2900–0554''.

SUPPLEMENTARY INFORMATION:

Titles

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN.

e. Compliance Reports for Per Diem and Special Needs Grants. No form needed. May be reported to VA in standard business narrative.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA.

g. Compliance Reports for Technical Assistance Grants. No form needed. May be reported to VA in standard business narrative.

OMB Control Number: 2900–0554.

Type of Review: Revision of a currently approved collection.

Abstract: The information collected on VA Form 10–0361 series, Homeless Providers Grant and Per Diem Program, will be used to determine applicants eligibility to receive a grant/or per diem payments which provide supportive housing/services to assist homeless veterans transition to independent living. The collected information will be used to apply the specific criteria to rate and rank each application; and to obtain information necessary to ensure that Federal funds are awarded to applicants who are financially stable and who will conduct program for which a grant and/or per diem award was made. If this data were not collected, VA would not be able to implement the provisions of Public Law 107–95.

Affected Public: Not-for-profit institution, and State, local or tribal government.

Estimated Total Annual Burden:

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—3,500 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—2,000 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—3,000 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—4,000 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—1,500 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—250 hours.

g. Compliance Reports for Technical Assistance Grants—90 hours.

Estimated Average Burden Per Respondent

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—35 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—10 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—20 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—20 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—5 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—10 hours.

g. Compliance Reports for Technical Assistance Grants—2.25 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—100.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—200.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—150.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—200.

e. Compliance Reports for Per Diem and Special Needs Grants—300.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—25.

g. Compliance Reports for Technical Assistance Grants—40.

Dated: March 14, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–6789 Filed 3–20–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Former Prisoners of War (FPOW) will be held on April 28–30, 2003, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. On April 28, the meeting will be held in the Omar Bradley Conference Room and on April 29 and 30, the Committee will meet in Room 230. Each day the meeting will convene at 9 a.m. and end at 4:30 p.m. The meeting is open to the public.

The purpose of the committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care and rehabilitation.

The agenda for April 28 will begin with an introduction of Committee members, remarks from dignitaries, a review of Committee reports, an update of activities since the last meeting, and a period for FPOW veterans and/or the public to address the committee. The Committee will also discuss future plans for the VA FPOW Learning Seminars, and conclude with a report on the development of Special FPOW Care and Benefits Teams. The agenda on April 29 will include a review of VA's Compensation and Pension Service activities, including new outreach initiatives to FPOWs, initiatives to reduce the number of old pending disability claims, as well as a progress report from VA's FPOW Medical Presumptions Workgroup. The Committee will also hear presentations on the activities of the Veterans Health Administration, including a report on priority for FPOWs in Long-Term Health Care programs. The Committee will then hear a presentation from the Robert E. Mitchell Center for Prisoner of War Studies. The day will conclude with new business and general discussion. On April 30, the Committee's Medical and Administrative work groups will break out to discuss their activities and report back to the Committee. Additionally, the Committee will review and analyze the comments discussed throughout the meeting for the purpose of assisting and compiling a final report to be sent to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Ronald J. Henke, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted materials must be received by April 18, 2003.

Dated: March 14, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–6790 Filed 3–20–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

National Commission on VA Nursing; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will conduct public hearings during the month of April 2003. The purpose of the hearings is to obtain oral and written testimony on current VA performance of nursing staff peer review process, promotion, recognition, respect and rewards. Information gained from this endeavor will be considered in forming conclusions and making recommendations for enhancing staff retention.

The purpose of the Commission is to provide advice and make recommendations to Congress and the Secretary of Veterans Affairs regarding legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA. The Commission is required to submit to Congress and the Secretary of Veterans Affairs a report, not later than two years from May 8, 2002, on its findings and recommendations.

Nursing staff of the Department of Veterans Affairs from across the country will have an opportunity to give oral and written testimony. Hearings will begin at 9 a.m. and end at 5 p.m. Oral testimony will be limited to 10 minutes. An open forum will be available for 20 minutes during the morning and 20 minutes in the afternoon. Each person registered to speak during the open forum will have 3 minutes and will be given a first come first serve slot. All hearings will be conducted by a lead Commission member with other members in attendance.

Hearings are planned to accommodate staff from various networks. The dates and location are as follows:

April 3, 2003: Hotel Monaco, 333 St. Charles Ave., New Orleans, LA 70130. (504) 561–0010.

April 16, 2003: Radisson Plaza-Warwick Hotel, 1701 Locust Street, Philadelphia, PA 19103. (215) 735–6000.

April 24, 2003: Marriott Chicago Schaumburg, 50 N. Martingale Road, Chicago, IL 60173. (847) 384–2739.

April 30, 2003: Location to be determined, Los Angeles, CA.

Additional information and instructions for preparing and submitting written testimony is available on the Commission's Web site at *http://www.va.gov/ncvan.*

Members of the public may submit prepared statements for review by the Commission in advance of hearings, to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at Department of Veterans Affairs (108N), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the hearing should contact Ms. Stephanie Williams, Program Analyst at (202) 273–4944.

Dated: March 14, 2003.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–6791 Filed 3–20–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
March 21, 2003

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 4, 5, 16, and 385
Hydroelectric Licensing Under the Federal Power Act; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 5, 16, and 385

[Docket No. RM02–16–000]

Hydroelectric Licensing Under the Federal Power Act

February 20, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations pertaining to hydroelectric licensing under the Federal Power Act. The proposed revisions would create a new licensing process in which a potential license applicant's pre-filing consultation and the Commission's scoping pursuant to the National Environmental Policy Act (NEPA) would be conducted concurrently, rather than sequentially. The proposed rules also provide for increased public participation in pre-filing consultation; development by the potential applicant of a Commission-approved study plan; better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies with authority to require conditions for Commission-issued licenses; encouragement to informal resolution of any study disagreements, followed by mandatory, binding study dispute resolution; and schedules and deadlines.

DATES: Comments are due April 21, 2003.

ADDRESSES: File written comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments should reference Docket No. RM02–16–000. Comments may be filed electronically or by paper (an original and 14 copies, with an accompanying computer diskette in the prescribed format requested).

FOR FURTHER INFORMATION CONTACT: John Clements, Office of the General Counsel, Room 101–57, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8070.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing the process for licensing of hydroelectric power projects by establishing a new licensing process. The proposed amendments are the culmination of many actions by the Commission, other Federal and state agencies, Indian tribes, licensees, and members of the public to develop a more efficient and timely licensing process, while ensuring that licenses provide appropriate resource protections required by the Federal Power Act (FPA) and other applicable laws.

2. The proposed new licensing process is designed to create efficiencies by integrating a potential license applicant's pre-filing consultation with the Commission's scoping pursuant to the National Environmental Policy Act (NEPA).[1] Highlights of this ''integrated'' process include:

- Increased assistance by Commission staff to the potential applicant and stakeholders during the development of a license application;
- Increased public participation in pre-filing consultation;
- Development by the potential applicant of a Commission-approved study plan;
- Better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses;
- Encouragement of informal resolution of study disagreements, followed by mandatory, binding study dispute resolution;
- Elimination of the need for post-application study requests; and
- Issuance of public schedules and enforcement of deadlines.

3. We believe that the proposed changes will significantly improve the licensing process. During the development of this proposed rule, many commenters have raised issues beyond the scope of this rulemaking and, in fact, beyond the scope of this Commission's jurisdiction, such as concerns about the content of license conditions imposed by various federal land and resource management agencies with authority to require conditions for Commission-issued licenses. We acknowledge that the changes proposed in this rulemaking are largely procedural in nature and would amend only the regulations of this Commission,

[1] 42 U.S.C. 4321, *et seq.*

not the regulations of any of the Federal or state agencies involved in hydropower licensing. Nevertheless, we believe that these proposed procedural changes will promote better-informed decision-making by everyone involved in the licensing process.

4. Moreover, we will continue to support the resource management agencies outside the context of this rulemaking as they explore ways of improving their own licensing-related processes. We appreciate the collegial spirit in which the Departments of Agriculture, Commerce, and the Interior, in particular, have worked with us during the development of this proposed rule. We applaud the announcement of Interior's Assistant Secretary-Policy, Management, and Budget, at our joint hearing on November 7, 2002 in this proceeding, that Interior is developing an administrative appeals process for its mandatory conditions. Agriculture has had such a process for several years, and we support that Department in examining ways of streamlining its existing process. The Commission is ready to assist these other agencies in this regard.

II. Background

5. Sections 4, 10, 14, 15, and 18 of the FPA,[2] as amended by the Electric Consumers Protection Act of 1986 (ECPA),[3] provide the regulatory framework for the licensing of non-Federal hydroelectric projects.

6. Section 10(a)(1)[4] provides that hydropower licenses issued must be best adapted to a comprehensive plan for the affected waterways for all beneficial public uses, and must include provisions for the protection of fish and wildlife and other beneficial public uses, and that the Commission must give environmental values, including fish and wildlife and recreation, equal consideration with hydropower development. Under section 4(e),[5] licenses for projects located within Federal reservations must also include any timely conditions mandated by the department that manages the reservation, which in most cases is the Department of Agriculture or the Interior. Under section 18, licenses must also include fishways if they are timely prescribed by the Departments of Commerce or Interior.

7. In addition, section 401(a)(1) of the Clean Water Act[6] requires a license applicant to obtain from the state in which any project discharge into navigable waters originates, certification that such discharge will comply with applicable water quality standards, or waiver of such certification. Section 401(d) requires state water quality certification conditions to be included in hydroelectric licenses.

8. Other Federal statutes may also apply to a license application. These include, among others, the Endangered Species Act (ESA),[7] Coastal Zone Management Act (CZMA),[8] and National Historic Preservation Act (NHPA).[9]

A. Current Licensing Procedures

9. The Commission staff processes license applications in hearings conducted by notice and comment procedures. Licensing procedures have evolved over time in response to changes in the statutory framework, increased public awareness of the need for increased environmental protection, and as a result of Commission efforts to make the process more efficient and effective.

10. Under the existing ''traditional'' process, prior to filing an application, applicants must consult with Federal and state resource agencies, affected land managing agencies, Indian tribes, state water quality agencies and, to some extent, the public, and must provide the consulted entities with information describing the proposed project. The applicant must also conduct studies necessary for the Commission staff to make an informed decision on the application. Under the Commission's detailed regulations concerning prefiling consultation and processing of filed applications,[10] the formal proceeding before the Commission does not begin until the license application is filed. Accordingly, the Commission staff do not generally participate in pre-filing consultation.

11. After an application is filed, the Federal agencies with responsibilities under the FPA and other statutes, the states, Indian tribes, and other participants have opportunities to request additional studies and provide comments and recommendations. Federal agencies with mandatory conditioning authority also provide their conditions. The Commission staff may ask for additional information that it needs for its environmental analysis. All of this information is incorporated into the Commission staff's environmental review under the NEPA.

12. The Commission's regulations also provide for an alternative licensing process (ALP), which combines the pre-filing consultation process under the FPA with the environmental review process under NEPA.[11] Under this process, the parties work collaboratively prior to the filing of the application to develop the application and, in most cases, a preliminary draft NEPA document, and generally anticipate efforts to conclude a settlement agreement. Also, the Commission staff participate to a greater extent than under the traditional process.

B. Reform Efforts

13. There is widespread agreement that additional improvements are needed to further the goal of achieving a more efficient and timely licensing process without sacrificing environmental protection. The President's National Energy Policy report included recommendations in this regard,[12] and the Commission, the Federal agencies, and many hydropower program stakeholders are engaged in a variety of activities toward the same end.

14. The Commission staff's ongoing efforts include an Outreach Program in which interested persons meet with members of the licensing staff to learn about the licensing process and related laws and Commission regulations; various interagency training activities; encouragement of settlements through the use of Alternative Dispute Resolution (ADR); and issuance of guidance documents.[13] In May 2001, the Commission staff prepared a comprehensive report on hydropower licensing, including recommendations designed to make the licensing process more efficient and timely.[14] The Commission held in December 2001 and November 2002 Hydroelectric Licensing Status Workshops to identify and focus attention on long-pending license applications and find ways to bring

[2] 16 U.S.C. 797, 803, 807, 808, and 811. Sections 4 and 10 apply to all licenses. Sections 14 and 15 are specific to the issuance of a new license following the expiration of an initial license.

[3] Pub. L. 99–495, 100 Stat. 1243.

[4] 16 U.S.C. 803(a)(1).

[5] 16 U.S.C. 797e.

[6] 33 U.S.C. 1341(a)(1).

[7] 16 U.S.C. 1531–1543.

[8] 16 U.S.C. 1451–1465.

[9] 16 U.S.C. 470–470w-6.

[10] *See* 18 CFR Parts 4 and 16.

[11] 18 CFR 4.34(i).

[12] *Report of the National Energy Policy Group,* May 2001.

[13] Staff guidance documents include the Licensing Handbook, Environmental Analysis Preparation, and ALP guidelines. All of these are posted on the Commission's Web site (*http://www.ferc.gov/hydro*).

[14] *Report to Congress on Hydroelectric Licensing Policies, Procedures, and Regulations—Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000,* Federal Energy Regulatory Commission, May 2001 (Section 603 Report). The report can be viewed at *http://www.ferc.gov/hydro/docs/section603.htm.*

these cases to completion.[15] The Commission staff also held regional workshops with states on how better to integrate Commission licensing processes with the states' Clean Water Act responsibilities.[16]

15. Federal agencies have also worked cooperatively on several efforts to improve the licensing process. For example, the staff of the Commission, the Departments of the Interior, Commerce, Agriculture, and Energy, the Council on Environmental Quality, and the Environmental Protection Agency formed an Interagency Task Force to Improve Hydroelectric Licensing Processes (ITF). The ITF's efforts resulted in a series of commitments and administrative actions intended to make the licensing process more efficient and timely.[17]

16. More recently, in July of 2001, senior managers from the Commission staff and other Federal agencies formed the Interagency Hydropower Committee (IHC) to build on the commitments developed by the ITF and to develop additional procedural modifications that would further improve the efficiency and timing of licensing while maintaining environmental protections. The IHC developed a proposal for an integrated licensing process. Another integrated licensing process proposal was developed and circulated for comment by the National Review Group (NRG), a multi-stakeholder forum consisting of representatives from industry and non-governmental organizations (NGOs).

17. One reform concept that shows particular promise is a licensing process that integrates an applicant's prefiling consultation with resource agencies, Indian tribes, and the public with the Commission staff's NEPA scoping (integrated process). Such an approach could differ from the ALP in several respects, such as ensuring the Commission staff involvement at all stages, establishing deadlines for all participants, providing a more effective vehicle for study dispute resolution than currently exists, and better integrating the Commission staff actions with the actions of other Federal agencies with statutory roles under the FPA.

C. The Instant Proceeding

18. On September 12, 2002, the Commission and the Federal agencies with mandatory conditioning authority under FPA sections 4(e) and 18 commenced this proceeding by issuing a notice requesting comments in response to a series of questions concerning the need for a new licensing process, how an integrated process might best be implemented, and establishing a series of regional public and tribal forums to discuss issues and proposals associated with establishing a new licensing process.[18]

19. Following the regional forums and submission of written comments in early December 2002, the Commission conducted public drafting sessions on December 10–12, 2002, in which discussion of the results of the regional forums and comments was followed by a broadly-based collaborative effort to develop consensus recommendations on an integrated licensing process and, where possible, develop preliminary draft regulatory text.

20. Following the December drafting sessions, the Commission staff and staff from the Federal agencies with mandatory conditioning authority held additional discussion and drafting sessions.

21. The Commission appreciates the active participation and deliberate and thoughtful comments provided by the industry representatives, Federal and state resource agencies, Indian tribes, and members of the public in this proceeding. The provisions of the proposed rule, discussed below, attempt to fully take into consideration the interests of all of the stakeholders and to propose an integrated licensing process that will serve the public interest.[19]

22. Following the issuance of this notice, and prior to the due date for comments, the Commission will conduct additional regional stakeholder workshops to seek consensus on final rule language. The schedule for these workshops may be viewed on the hydroelectric page of the Commission's website.

III. Discussion

A. Need for a New Integrated Process

23. The fundamental issue in this proceeding is whether the Commission, by adopting a new licensing process, can make significant progress toward the goal of more efficient and timely licensing procedures, while ensuring environmental protection.[20] Many commenters from across the spectrum of interests think a new process can achieve these goals.[21] Many also support the adoption of an integrated process, subject to various recommendations.[22]

24. Others assert that there is no need for an integrated licensing process distinct from the traditional process if the Commission takes the most beneficial aspects of such a process and incorporates them into the traditional process, or believe that a new untested process is unlikely to result in greater efficiency.[23]

25. Many factors can cause delays in licensing. These include multiple applications for projects in the same watershed; Failure to resolve during pre-filing consultation disagreements over requests for the applicant to gather information or conduct studies; requests for extensions of time, including extensions of time for Federal agencies to provide mandatory conditions pursuant to FPA section 4(e) and

[15] The Commission staff established Docket No. AD02–05 for the workshop proceeding. A number of entities have made filings in that proceeding with recommendations for improvements to the licensing process.

[16] Summaries of these workshops are on the Commission's Web site at *http://www.ferc.gov/hydro/docs/licensing_workshop_sched.htm.*

[17] Reports issued by the ITF have been made public and are posted on the hydroelectric page of the Commission's Web site. *See http://www.ferc.gov/hydro/docs/interagency.htm.*

[18] 67 FR 58,739 (September 19, 2002). Public and Tribal forums were held in Milwaukee, Wisconsin; Atlanta, Georgia; the Commission's headquarters in Washington, DC; Bedford, New Hampshire; Sacramento, California; and Tacoma, Washington. Entities that made oral comments at the public and tribal forums or filed written comments in response to the September 12, 2002 notice are listed on Appendix A.

[19] For the convenience of commenters on the proposed rule, a redline/strikeout version of the affected regulatory text is being posted on the hydroelectric page of the Commission's Web site.

[20] Commenters raised many issues that exceed the Commission's jurisdiction or are beyond the scope of this rulemaking, including dispersed decisional authority in the statutory scheme, minimum terms for licenses, our policy on decommissioning of hydroelectric projects, annual charges for the use of Federal lands, and the Mandatory Conditions Review Policy of the Departments of the Interior and Commerce. These matters should be addressed elsewhere.

[21] *E.g.,* Ameren/UE, RAW, HRC; NHA; NRG, AmRivers, Oregon, Washington, APT, Oregon, Kleinschmidt, Michigan DNR, C–WRC, CDWR, Menominee, WYGF, NHDES, Wisconsin DNR, California, Interior, NCWRC, WPPD, NYSDEC, Long View, Southern, Maryland DNR, NMFS, CRITFC, ADF&G, PG&E.

[22] *E.g.,* NHA, HRC, NRG, Kleinschmidt, Michigan DNR, C–WRC, Menominee, WYGF, NHDES, KT, OWRB, Wisconsin DNR, Interior, EEI, PG&E, HETF, PCWA, NCWRC, WPPD NYSDEC, Southern, Caddo, Xcel, NMFS, CRITFC, California, NMFS, ADF&G, Oregon, CDWR, PG&E. The NHA version of an integrated process actually encompasses two different tracks, one of which features pre-application study development and NEPA scoping, and the other of which features post-application additional information and NEPA scoping. Only the first track would be considered an integrated process as we have defined it.

[23] California, SCE, Idaho Power, EEI. California and SCE both proposed modified traditional process models, which they characterize as integrated processes. The California process does not fully integrate NEPA scoping with study plan development, but does feature pre-filing NEPA scoping. Wisconsin DNR and Oregon endorse California's version of the traditional process model.

fishway prescriptions pursuant to section 18, or required consultation with the U.S. Fish and Wildlife Service or National Marine Fisheries Service (NMFS) and attendant studies under the ESA; and delayed receipt of state water quality certification.[24]

26. Some or all of these factors may be present in any license proceeding. However, the principal causes of delay are the need for additional information or studies after the application is filed, untimely receipt of biological opinions under the ESA, and state water quality certification.[25] The longer the delay in a licensing proceeding, the more likely the cause is to be lack of water quality certification.[26]

27. The potential benefit of an integrated licensing process can be judged by the extent to which it addresses these causes of delay in licensing. The process we are proposing addresses these causes by: merging pre-filing consultation with the Commission's NEPA scoping; enhancing consultation with Indian tribes; improving coordination of processes with Federal and state agencies, especially those with mandatory conditioning authority; increasing public participation during pre-filing consultation; and developing a study plan and schedule, including mandatory, binding study dispute resolution. With these features, the proposed process should make it much more likely that the Commission, Federal agencies with mandatory conditioning authority, and state agencies or Indian tribes with water quality certification authority obtain all the information they need to carry out their respective statutory responsibilities by the time the application is filed. This process should also encourage early settlement discussions by fostering early development of information necessary to inform settlement negotiations.[27]

28. Some commenters made process proposals that they characterize as modifications to the traditional process but which incorporate some, but not all, of the elements of the proposed integrated process. NHA, for instance, would allow the license applicant to unilaterally determine whether to use an integrated process or to defer NEPA scoping until after the license application is filed, and would not provide for binding pre-filing study dispute resolution. California would include expanded pre-filing public participation and dispute resolution, but would defer NEPA scoping until late in the pre-filing process. For these and other reasons, these proposals fall short of the goal. These proposals do however also contain other elements which, as discussed below, have been included in the proposed process.

B. Traditional Process and ALP To Be Retained

29. Our proposal to establish an integrated process raises the issue of whether there is a need to retain the traditional process or ALP. Industry commenters generally favor retaining both processes.[28] They argue that a single process is not suitable for every case, and that they need flexibility to choose a process that best suits the circumstances of each project.[29] NHA suggests that licensee process choice is needed to prevent participants from withholding agreement to an appropriate process as leverage to extract substantive or other procedural advantages. NHA also states that the traditional process remains suitable for projects that have few complications or issues. EEI adds that the traditional process may be most suitable for cases where the stakeholders are extremely polarized and unlikely to work cooperatively, and is less costly for licensees than the ALP. EEI and some licensees also state that the ALP, which tends to be labor-intensive for all concerned, is best suited to large projects with the revenues to support an intensive collaborative effort, but makes little sense for the operator of a small project.[30] Idaho Power adds that it can be difficult to get full participation in pre-filing consultation by agencies, tribes, and NGOs with large agendas and limited resources. Xcel states that both the traditional and ALP processes have been used successfully, and that the study criteria and timelines of the IHC and NRG proposals are rigid and less likely to foster settlements. At least one Native American commenter suggests that the limited resources of many Indian tribes favor a choice of processes, although it does not endorse leaving the choice to applicants.[31] Some commenters also suggest that the traditional process needs to be retained as a fallback in the event that an integrated process or ALP breaks down.[32]

30. EEI and NHA also urge us to allow license applicants to tailor the licensing process to individual projects; that is, regardless of the process used, allow waiver of procedural requirements and the incorporation into ongoing processes of features from an integrated process.[33] EEI, for instance, states that the National Energy Policy Act of 1992[34] and the Council on Environmental Quality regulations [35] permit license applicants to prepare draft environmental assessments and to have a third party (*i.e.*, a contractor funded by the applicant, but working under the Commission's direction) prepare a draft environmental impact statement (EIS). It requests that the Commission modify its regulations to permit this in any process at the applicant's option, rather than only where an ALP is used. These arguments are considered below.[36]

31. Environmental groups, some Federal and state agencies, and tribes argue that the Commission should have one process that is sufficiently flexible to accommodate the circumstances of any specific proceeding. Broadly stated, they suggest that this flexibility would be achieved by allowing for the applicant and stakeholders to agree to modify process steps and schedules, subject to Commission assent, in order to ensure that all parties understand and agree to the process applicable to each proceeding, and by providing guidance on acceptable terms of settlement agreements. These commenters maintain that multiple processes will make it very difficult for participants with limited resources, and that it is already difficult for environmental groups that rely heavily on volunteers to

[24] Other actions that have increased the time required for licensing include a policy established in 1993 of issuing draft environmental analyses for comment in all license proceedings and increasing reluctance by states to grant waiver of water quality certification. *See* 603 Report, p. 32.

[25] *Id.,* pp. 37–39.

[26] *Id.,* p. 43.

[27] Some of these broadly-stated features and more specific features discussed below are consistent with, or were developed in the context of, the drafting groups. These include early Commission contact with Indian tribes, development of a pre-application document, inclusion of tribal and public interest considerations in information development and study plan criteria. One drafting group also discussed concepts related to the filing of a draft license application that are the subject of specific requests for comment.

[28] NHA, Idaho Power, AEP, EEI, DM&GLH, APT, SCL, SCE, WPPD, Xcel, NEU, Troutman, Southern, NYSDEC. On this point, the industry majority appears to enjoy some support from NYSDEC and WDOE. Michigan DNR and WDOE state that they are less concerned with the number of processes than with funding, coordination, mutually agreeable time frames, and other matters. PG&E however suggests that an integrated process would eliminate the need for the traditional and alternative process.

[29] NHA, Idaho Power, AEP, EEI, DM&GLH, APT, SCL, SCE, WPPD Xcel, ORWB; NEU; Troutman; Southern; NEU.

[30] SCE, CHI, EEI, Idaho Power.

[31] GLIFWC.

[32] EEI, Troutman, Menominee.

[33] EEI.

[34] Pub. L. 102–486, 106 Stat. 2776–3133 (Oct. 24, 1992).

[35] 40 CFR part 1500, *et seq.*

[36] *See* Section III.F.3.b.

educate their members on the existing licensing processes.[37]

32. If there is to be more than one proceeding, some of these entities recommend that the ALP be the only alternative to the integrated process, and some suggest that it be modified to better encourage settlement agreements.[38] HRC requests that if the traditional process is retained, it be modified to incorporate important elements of an integrated process. NHDES and OWRB recommend that the ALP and traditional processes be retained until it is demonstrated that the integrated process works, at which point those process options would be eliminated.

33. We conclude that it is appropriate to retain the traditional process and ALP, but that the integrated process should be the default process. Commission approval would be required to use the traditional process, as is now required for the ALP.[39] We are persuaded that the concerns of the industry and others that the integrated process may not be appropriate for some proceedings are well-founded. The integrated process brings together in a compressed time frame consultation, studies, dispute resolution, NEPA scoping and document preparation, and water quality certification activities that are now conducted over a much longer time frame. This could pose undue difficulty for some licensees, particularly those operating small projects, and for the other participants, who may agree that the traditional process will work best. Other considerations in requesting the traditional process might include the degree of stakeholder support for that process, level of controversy concerning project impacts, and the degree to which relevant information already exists.

34. We are also not inclined to abandon the alternative process. It has a demonstrated track record of reducing license application processing times,[40] as well as fostering settlement agreements, which are commonly filed with the application itself.

35. We are mindful of concerns that the availability of three process alternatives could be a source of confusion for some participants. We conclude however that the benefit of having different processes that can be applied to differing circumstances outweighs this concern. In this regard, we also note that the integrated process regulations have been crafted to show the steps clearly in sequence from beginning to end, and to be as self-contained (*i.e.*, with a minimum of cross-referencing to parts 4 and 16) as is practicable, given the complexity of the statutory scheme. We are also proposing to require any applicant seeking permission to use the traditional process or ALP to do so when the notification of intent to seek a license (NOI) is filed,[41] so that all concerned will have a voice in the process selection and will know which process will apply to the proceeding from the very beginning.[42]

36. We have also concluded that certain elements of the integrated process can be included in the existing traditional licensing process. These include full public participation in pre-filing consultation, mandatory, binding study dispute resolution, and elimination of post-application additional information requests for license applications. These are discussed below.[43]

D. Key Issues and Goals for an Integrated Licensing Process

37. The September 12, 2002, notice requested comments on, among other things, what key issues in the licensing process need to be addressed and how a new process might be structured to resolve those key issues. The responses confirm that the notice correctly identified the key issues.

1. Early Identification of Issues and Study Needs

38. Nearly all commenters state that one key to reducing the length of the licensing process is for all concerned entities, including the Commission staff, to participate as early as possible, so that issues can be fully identified, study needs resolved, and necessary studies timely conducted.[44] Many also advise that a well-designed integrated process would improve the timing and development of mandatory terms and conditions by fostering the early involvement of Federal and state agencies with such authorities so that needed information-gathering and studies are timely commenced and completed.[45]

a. Advance Notification of License Expiration

39. The IHC proposed that three years prior to the deadline for an existing licensee to file notification of intent (NOI) to seek a new license the Commission staff would notify the licensee of the deadline and provide it with a list of basic information needs and resource agency and tribal contacts (advance notification of license expiration, or advance notification). Under the IHC proposal, the licensee would be encouraged to contact resource agencies, Indian tribes, and the public to begin identifying issues and collecting data. This early issue identification and data collection would help to ensure that the licensee files with its NOI a complete ''Pre-Application Document,'' [46] more fully described below, which would help to make effective integrated pre-filing consultation and early NEPA scoping.

40. The advance notification concept received much favorable comment.[47] All of the process proposals include some form of voluntary or required pre-NOI consultation.[48] Some proposals contemplate an advance notification followed by a pre-NOI meeting among the licensee, Commission staff and stakeholders.[49] NHA would also have the Commission staff directly contact Indian tribes to discuss licensing process options and initiate government-to-government consultation. Under the NHA and SCE proposals the license applicant would, following the public meeting, choose a licensing process.[50]

41. Long View recommends that the Commission modify its regulations to allow existing licensees to file their NOI

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[37] HRC, AmRivers, NYRU, NE FLOLW, AMC, BRB–LST, Menominee, VANR, KT, RAW, GLIFWC, Oregon, CRITFC, AMC, BRB–LST, Interior.

[38] RAW, Oregon, C–WRC, Menominee, VANR, Wisconsin DNR, DM&GLH, Domtar, FPL, AMC, AW, California.

[39] *See* 18 CFR 4.34(i).

[40] *See* 603 Report, pp. 29–54.

[41] *See* proposed 18 CFR 5.3 (Notification of intent).

[42] *See* proposed 18 CFR 5.1 (Applicability). As discussed below, we also propose to require a potential applicant for an original license to file an NOI.

[43] *See* Section III.F. We are also making certain other modifications applicable to all processes, such as including draft license articles with draft NEPA documents. *See* Section III.D.4.

[44] *E.g.,* EEI, PG&E, NRG, SCE, NHA, Michigan DNR, HRC, NYSDEC, Idaho Power, NF Rancheria, Caddo, ADK, AmRivers, AMC, APT, SCL, C–WRC, CDWR, Interior, PG&E, HETF, PCWA, APT, DM&GLH, Skancke, NYRU, Oregon, Wausau, Salish-Kootenai, HLRTC, PREPA, Kleinschmidt, Xcel, California, WPPD, RAW, GLIFWC, Virginia, CRITFC, NMFS, NHDES, VANR, Wisconsin DNR.

[45] SCE, Oregon, Michigan DNR, HRC, NHDES, Wisconsin DNR, Interior, EEI, PG&E, PCWA, NCWRC, WPPD Xcel, NMFS, PacifiCorp, Kleinschmidt, Idaho Power, NYSDEC, Maryland DNR, ADF&R, CRITFC, California.

[46] *See* proposed 18 CFR 5.4 (Pre-application document).

[47] NHA, APT, Oregon, Idaho Power, VANR, NHDES, HRC, SCE, Kleinschmidt, Menominee, EEI, BRB–LST, Southern.

[48] Voluntary pre-NOI consultation is contemplated in the NRG and PG&E proposals. Required consultation, at least to the extent of an initial informational meeting conducted by the Commission staff and existing licensee, is provided for in the NHA proposal.

[49] NHA, HRC, SCE.

[50] NHA and SCE apparently would not have the applicant's process choice subject to Commission approval.

any time prior to the statutory limit of five years prior to license expiration, rather than only during a five to five and one-half year window. California recommends moving the deadline date for the NOI forward one year (*i.e.,* 6.5 years before license expiration) based on its belief that more time is needed between the NOI and license application to accommodate information-gathering and studies.[51]

42. We conclude that the advance notification concept has merit, and that the notification should be issued regardless of which licensing process may be selected. It would however be inconsistent with our goal of developing a more timely process to compel existing licensees to commence the licensing process in advance of the NOI, and we will not do so. The Commission believes that in the great majority of cases, a license applicant should be able complete consultation, information-gathering and studies, and application development in the three to three and one-half year period provided for in our regulations.

43. We propose to issue an advance notification sufficiently in advance of the deadline date for filing of an NOI with respect to each project to ensure that the existing licensee is alerted to the requirements of the NOI, Pre-Application Document, and any potential request to use the traditional process or ALP.[52] Because the advance notification will be an administrative measure taken by the Commission which requires no action on the part of any other entity, and which would be undertaken regardless of the process selected, we do not propose to include it in the regulations.

44. Also, as recommended by one of the December 2002 drafting groups, the Commission staff will contact Indian tribes whose resources may be affected by a future relicense proceeding to inform them about the licensing process and how they can participate in it, and to become aware of concerns the tribes have with respect to potential relicense proceedings. In this regard, we also intend to create a Tribal Liaison position to ensure that tribes have a clearly identified point of access to the Commission staff.[53]

b. Integrating Pre-Filing Consultation With NEPA Scoping

45. Under the traditional process, pre-filing consultation focuses on development of information and studies by the potential applicant, agencies, and Indian tribes. Public participation is limited.[54] The Commission staff also has not participated in pre-filing consultation, because under the traditional process there is no proceeding until an application is filed, and, particularly with regard to potential original license applications, the Commission has not been willing to commit its limited resources to a process that may not result in a license application.

46. Nearly all commenters agree that the earlier the Commission's NEPA scoping begins, the earlier issues and information needs will be identified, and the earlier information-gathering and studies will be commenced and completed.[55] We agree. Accordingly, the proposed integrated process provides for the Commission staff to begin NEPA scoping immediately after the NOI is filed.[56]

47. NEPA scoping will be greatly assisted by the availability to the participants of as much relevant existing information as possible when scoping begins. The current regulations require an existing licensee, at the time it files its NOI, to make available to the public existing information with respect to the project, its operation, and project impacts on various resources.[57] They also require all potential operating license applicants to provide an initial consultation package to consulted entities during first stage consultation.[58] We propose to supplant these requirements for all processes by requiring a potential applicant for an operating license to file with its NOI the above-mentioned Pre-Application Document.[59]

48. The proposed Pre-Application Document is intended to compile and provide to the Commission, Federal and state agencies, Indian tribes, and members of the public engineering, economic, and environmental information available at the time the notification of intent is filed. It would also provide the basis for identifying issues and information needs, developing study requests and study plans, and the Commission's environmental scoping documents under NEPA. Because of its form and content requirements, the Pre-Application Document would be a precursor to Exhibit E, the environmental exhibit, in the license application. For license applicants using the integrated process, the Pre-Application Document would evolve directly into a new Exhibit E. The integrated process Exhibit E would have the form and content requirements of an applicant-prepared draft NEPA document.[60] Applicants using the traditional process would continue to use the existing Exhibit E, and applicants using the ALP could use the existing Exhibit E or file with their application in lieu thereof an applicant-prepared environmental analysis. The Commission requests comments on the content of the Pre-Application Document.[61]

49. Some industry commenters contend that integrating pre-filing consultation with NEPA scoping should be optional for the applicant.[62] That is, of course, fundamentally inconsistent with the concept of an integrated licensing process. Deferral of NEPA scoping until after the license application is filed should occur where the circumstances are such that use of the traditional process is permitted.[63] We also think that requiring all potential operating license applicants to

[51] We disagree with California that the 3 to 3.5-year time frame from NOI to application contemplated by the FPA is insufficient to develop the necessary information and still provide about two years in which to conduct field studies. As discussed above, the principal barrier to success in the early conduct of studies has been the lack of active Commission staff participation early on and lack of effective pre-filing dispute resolution. The proposed integrated process should go a long way toward curing this problem.

[52] Entities other than the licensee will be able to determine which licenses expire, and when, on the hydroelectric page of the Commission's website. They will likewise have access to the Commission's regulations and Pre-Application Document guidance. These resources should together enable interested members of the public to inform themselves of potential future relicense proceedings.

[53] *See* Section III.D.3.

[54] Unless the potential applicant voluntarily does more, public participation is limited to attendance at a single, publicly noticed meeting. *See* 18 CFR 4.38(g).

[55] *E.g.,* NHA, CDWR, NYSDEC, RAW, Caddo, Menominee, CRITFC, DM&GLH, Domtar, APT, Oregon, SCL, HRC, CRITFC, Oregon, Kleinschmidt, C–WRC, Interior, NMFS, Washington, California, SCE, Salish-Kootenai, HLRTF, PG&E, PCWA, Idaho Power, PacifiCorp, SCDWQ, APT, Michigan DNR, HRC, Wisconsin DNR, EEI, Maryland DNR, NMFS.

[56] *See* Section III.E.2.a.

[57] 18 CFR 16.7(d).

[58] 18 CFR 4.38(b)(1), 16.8(b)(1).

[59] Exemption and non-power license applicants would continue to use the traditional process and to distribute the initial consultation package now required by 18 CFR 4.38(b)(1) and 16.8(b)(1).

[60] *See* proposed 18 CFR 5.16(b).

[61] The Commission is interested in any comments parties may have on any aspect the proposed rule; however, there are several aspects on which we are particularly requesting comments. Appendix B is a list of all matters on which the Commission is specifically requesting comments, cross-referenced to the appropriate paragraph in the preamble. Commenters are requested to identify the paragraphs to which their comments respond.

[62] Xcel, NHA, HLRTF. Under NHA's proposal, an existing licensee would elect to have a pre- or post-application NEPA process when it files its NOI.

[63] The ALP generally encompasses pre-filing environmental scoping because it contemplates filing by the applicant of a draft environmental document.

file the Pre-Application Document will enhance the combined pre-filing consultation and NEPA scoping that now occurs in the ALP, and pre-filing consultation under the traditional process as well.

c. Study Plan Development

50. Involving all interested parties and Commission staff from the outset of consultation will not alone bring about timely development of information and studies. There is general agreement that a Commission-approved study plan is needed as well,[64] but divergent views on the appropriate development and content of study plans.

51. Industry commenters contend that agencies and NGOs often request studies not based on any demonstrable nexus between project operations and resource impacts, unreasonably oppose the use of existing data from the project in question or other projects, and are insensitive to the cost of the study to the applicant. They recommend that the Commission establish clear criteria for acceptable study and information-gathering requests, and some believe that clearly articulated criteria would significantly reduce the number of study disputes.[65] The ''nexus'' criterion is the one they most often identify as necessary.[66] Some request that we make explicit that site-specific studies are not always needed, since in many cases extrapolation of data from studies at similarly situated projects is appropriate.[67] Some industry commenters, while supporting the concept of study criteria, oppose a prescriptive approach to defining the scope of studies, suggesting that the matter is best resolved in the context of specific cases or in alternative licensing proceedings.[68]

52. Agency, tribal, and NGO commenters generally agree that established study criteria are desirable, but disagree with the industry concerning the development and application of criteria. For instance, HRC and others state that criteria for acceptable studies should include potential cumulative impacts of projects throughout the relevant river basin, because project impacts may extend far beyond project boundaries.[69] HRC adds that studies should be directed not merely at identifying project impacts, but also at determining the causes of those impacts and the sustainability of affected resources in a basin-wide cumulative impacts context. These commenters also tend to view the ''nexus'' issue differently, stating that a ''common sense'' test should apply to the establishment of a nexus between project operations and resource impacts.[70] In addition, several commenters indicate that deference should be shown to state agency study requests.[71]

53. Licensees note that, notwithstanding the Commission's well-established and judicially-approved policy that the baseline for environmental analysis is existing conditions,[72] participants continue to request studies intended to establish a pre-project baseline that would serve as a standard for purposes of establishing environmental mitigation requirements. They recommend that the Commission incorporate its policy into regulations establishing study criteria.[73] Some state agencies respond that state laws or policies require water quality standards to be established with reference to pre-project conditions, and that the record necessary to support certification is not complete until such studies are complete.[74] ADK states that the continuing dispute is unproductive and requests only that we resolve the matter once and for all.

54. We conclude that a Commission-approved study plan is an essential component of any integrated licensing process, and that such a plan will be most effective in reducing study disputes and allowing agreed-upon studies to go forward expeditiously if reasonably objective criteria by which to judge study requests are established.

55. The IHC developed six study dispute resolution criteria. These criteria are:

(a) Whether the request describes available, project-specific information, and provides a nexus between project operations and effects on the resources to be studied.

(b) Whether the request includes an explanation of the relevant resource management goals of the agencies with jurisdiction over the resource to be studied.

(c) Whether the study objectives are adequately explained in terms of new information to be yielded by the study and its significance relative to the performance of agency roles and responsibilities in connection with the licensing proceeding.

(d) If a study methodology is recommended, whether the methodology (including any preferred data collection and analysis techniques) is consistent with generally accepted practice in the scientific community.

(e) Whether the requester has considered cost and practicality, and recommended a study or study design that would avoid unnecessary costs while still fully achieving the stated study objectives.

(f) If the license applicant has provided a lower cost alternative, whether the requester has considered this alternative and, if not adopted, explained why the lower cost alternative would not be sufficient to achieve the stated study objectives.[75]

56. Several commenters endorse the IHC study criteria, and some, as discussed below, also suggest additions or modifications.[76]

57. A few commenters found fault with the IHC criteria. The principal criticism is that the criteria are focused on the needs of agencies with mandatory conditioning authority, notwithstanding that the Commission's public interest analysis must include issues raised by tribes or NGOs which may have resource goals and management plans of their own, or for which no formal goals or management plans may exist.[77] These commenters also take the position that a dispute resolution process should be open to any party, not just to Federal or state agencies or tribes to the extent that

[64] *E.g.,* NHA, SCE, HRC. PG&E's dispute resolution proposal calls for neutral, objective criteria. In most cases, these would be voluntarily applied by the parties to resolve disputes among themselves. Disputes brought to the Commission would not actually be resolved, because the Commission would issue only ''opinions'' based on the neutral, objective criteria.

[65] SCE, Kleinschmidt, NHA, WPPD, Menominee, Oregon, Long View.

[66] NHA, EEI, Wausau, Ameren/UE, Spaulding, Xcel, APT, Duke, SCE.

[67] Xcel, NHA, Southern, NHA.

[68] NHA. EEI states that the scope of required studies is already too broad and that the Commission should require only studies based on demonstrated nexus between project operations and resource impacts.

[69] HRC, NYSDEC, PFMC, Salish-Kootenai.

[70] GLIFWC, VANR.

[71] Michigan DNR, Wisconsin DNR, California, RAW.

[72] *See* American Rivers v. FERC, 201 F.3d 1186 (9th Cir. 1999); Conservation Law Foundation v. FERC, 216 F.3d 41 (DC Cir. 2000).

[73] Wausau, WE Energies, Duke, DM&GLH, Domtar, Skancke, FPL, APT, SCE, NHA. In a related vein, Ameren/UE suggests that applicants who choose the ALP are under continuous pressure to agree to unneeded studies as the price for continued cooperation of special interest groups, and that the Commission should relieve these applicants of this pressure by itself deciding on all study requests. That would however be inconsistent with the collaborative thrust of the ALP.

[74] Wisconsin DNR, NYSDEC.

[75] September 12, 2002 Notice, Attachment A, p. 11.

[76] Menominee, Duke, WPPD, Wisconsin DNR, Michigan DNR, Ameren/UE, NHA, HRC.

[77] PG&E, HRC. For instance, an NGO might support the establishment of certain instream flows in a bypass reach for aesthetic, biological health, or recreation purposes, but have no formal planning process of the kind that resource agencies typically employ.

exercise of their mandatory conditioning authority is implicated. EEI opposes the IHC criteria, because it opposes the IHC dispute resolution proposal in which they would be applied.

58. With regard to IHC criterion (a), the Menominee Tribe states that a study may be needed in some cases to determine if there is a nexus between project operations and resource impacts, and that this criterion should be applied liberally to accommodate that need. For instance, it may be reasonable to assume that unscreened turbines at a project cause entrainment mortality, but no data exist indicating the extent of such mortality or its biological impacts at the project site. GLIFWC similarly states a requester should not have to demonstrate a nexus when common sense dictates that there is one. VANR appears to assert that a requester should only have to articulate a relationship between the study request and a regulatory requirement.

59. We believe the nexus requirement is important to ensure that the licensing process is the vehicle for making informed decisions pursuant to the FPA and other applicable laws, rather than for development of information at the applicant's expense that may be useful to the requester in some other context. The same rule of reason must apply to the application of this criterion as to the application of any other criteria.

60. Some tribes state that the reference to agency jurisdiction over resources in criterion (b) should be removed, because it could be construed to exclude tribal participation in dispute resolution.[78] Similarly, one of the drafting groups recommended that this criterion be modified to take into account tribal and public participation in study plan development. As discussed below, we are proposing a study dispute resolution process for the integrated process which encompasses the participation of tribes in the development of the applicant's Commission-approved study plan, and in formal dispute resolution to the extent their mandatory conditioning authority under the Clean Water Act is implicated.[79]

61. Wausau indicates that agency management goals may not be an appropriate determinant of what studies are necessary, citing the possibility that a resource agency could establish the removal of dams in general as a management goal, which could lead to lengthy and expensive dam removal studies where there is no realistic prospect that a dam will be removed. SCE similarly states that the requester should have to demonstrate that agency management goals are appropriate, then show that the study is designed to directly address the nexus between impacts and management goals.

62. Our intention is that the criteria will be applied as a whole, so that the mere fact that a study request can be related to an agency management goal will not ensure that the study is required to be conducted. This necessarily implies that judgment calls will be made, and it is our intention that those calls be made in light of the principle that the integrated licensing process should to the extent reasonably possible serve to establish an evidentiary record upon which the Commission and all agencies or tribes with mandatory conditioning can carry out their responsibilities. We do not intend to second guess the appropriateness of agency or Tribal resource management goals, but must consider study requests based on those management goals in light of all applicable criteria, such as the ''nexus'' criteria, as well as the potential for conflict with important Commission policies, practices, or rules.

63. Regarding IHC criteria (e) and (f), some tribes believe that where tribal trust resources are concerned, study cost is irrelevant once the reasonableness of the need for the data has been established.[80] We cannot agree. Our responsibility to balance all aspects of the public interest with respect to any project proposal necessarily encompasses the exercise of independent judgement concerning the relative cost and value of obtaining information.

64. We conclude that the IHC study criteria are sound and reasonably objective, and propose to require participants in the integrated process to support their information-gathering or study requests with reference to those criteria, with minor modifications, such as the inclusion of tribal management plans and public interest considerations mentioned above. Our proposed criteria require an entity making an information-gathering or study request to, as applicable:

(1) Describe the goals and objectives of the study and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or tribes with jurisdiction over the resource to be studied;

(3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate filed season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge;

(7) Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.[81]

65. NHA and SCE would add the following three criteria:

1. If a study request has previously been the subject of dispute resolution, or if the Study Plan was undisputed, requests for that study would be rejected except in extraordinary circumstances.[82]

2. Study requests intended to establish a ''pre-project conditions'' baseline would be rejected.

3. The cost of the study must be justified relative to the value of the incremental information provided.[83]

66. NHA's first additional criterion has merit, particularly in light of the fundamental purpose of the proposed rule. It is not, however, really a study criterion, but a statement concerning treatment of additional information requests and will therefore be considered elsewhere.[84] With regard to the baseline issue, we note that all of the criteria will be applied in light of important Commission policies. Thus, we will not include this as a criterion, but will continue to adhere to our environmental analysis baseline policy.[85] NHA's third criterion is similar

[78] Menominee, BRB–LST, GLIFWC, Shoshone.

[79] Consistent with the recommendation of one of the drafting groups, we have also modified the study criteria to require parties requesting information development or studies to address any known resource management goals of Indian tribes or non-governmental organizations.

[80] Menominee, St. Regis Mohawks, GLIFWC.

[81] *See* proposed 18 CFR 5.10.

[82] NHA and EEI frame this also in terms of ''rebuttable presumption'' that no additional studies would be required under these circumstances.

[83] In a similar vein, PG&E suggests that criteria should include whether a real problem has been identified, how the information will be used, and the cost of the information relative to its value.

[84] *See* this section, infra, Section III.E.2, and proposed 18 CFR 5.13 and 5.14.

[85] As stated above, existing environmental conditions, not pre-project conditions in the case of

Continued

to proposed criterion (7). Both our proposed criterion (7) and NHA's recommended criterion (3) involve a significant degree of subjectivity, to which a rule of reason must be applied. The Commission requests comments on whether our proposed criterion (6) or NHA's recommended criterion (3) more appropriately deals with the issue of study costs.

67. SCE also proposes that we add a criterion that ''study results will aid the decision-making process in a substantive way.''[86] We are not entirely certain what SCE means, but the proposed criteria implicitly require that study requests not be frivolous and add some appreciable evidentiary value to the record.

68. Duke and the Michigan and Wisconsin DNRs state that the study criteria might include standard study plan formats, including standardized formats for reporting results. Michigan and Wisconsin DNR state that this would better enable states and tribes to meet their own responsibilities with respect to water quality and coastal zone management plan certification, as well as fishery and energy management goals. AMC recommends that a scientific peer review process be employed to develop a list of approved study methodologies.

69. We do not find that the guidance proposed by Duke and the Michigan and Wisconsin DNRs is appropriate for a rulemaking, because study plan development tends to be project-specific. We note however that Appendix D of the Commission's Hydroelectric Project Licensing Handbook, which may be viewed on the Commission's website, includes guidelines for preparing Exhibit E, the environmental exhibit. This appendix provides, in some detail, the information that should be considered for inclusion in a license application. Study plans can be developed from the information needs there described, and can be adapted to site-specific needs for information and in light of anticipated impacts.

70. Several commenters indicate that an effective study plan must include one or more opportunities for additional study requests to account for circumstances where studies result in data very different from the data expected or otherwise demonstrate that additional information is required to make a fully informed decision.[87] Licensee commenters generally acknowledge that such circumstances may occur, but stress their need for certainty with respect to costs and timeliness. They request that any new rule establish a presumption that an applicant which completes the approved study plan has obtained all of the information necessary for the Commission and agencies with mandatory conditioning authority to carry out their responsibilities, and that any request thereafter for additional information would be granted only upon a showing of extraordinary circumstances.[88]

71. We recognize the tension between licensees' desire for certainty and the need for finality in compiling the decisional record, and, on the other hand, the likelihood that circumstances will occur during the course of studies and data gathering which require additional information or a course correction in order to develop the necessary information. We are proposing therefore that each Commission-approved study plan under the integrated licensing process include specified points at which the status of information development and other relevant factors are reviewed and an opportunity for amendments provided. As the information-gathering and studies proceed however, the standard for new requests will increase.[89] Also, because the integrated process would include stakeholder participation in study plan development, periodic review of results and opportunities for amendments, and study dispute resolution, the integrated process does not contemplate any additional opportunity for participants to request information and studies after the license application is filed.

72. Finally, AMC contends that where studies are conducted by consultants who are paid by and answer to license applicants, the consultants are under explicit or implicit pressure from the applicant to find minimal or no impact on resources from project operations. It recommends that study plans require applicant-funded consultants to report directly to, and work under the direction of, a stakeholder group. We decline to adopt this proposal. Allegations of institutional bias might be directed at technical experts in the employ of any party to a license proceeding. AMC notes that applicants have agreed to such arrangements in at least one instance, and that it worked well for the participants, but we decline to establish a process that compels applicants to fund consultants who answer to other participants.

d. Study Dispute Resolution Process

73. Early resolution of study disputes was identified by many commenters as critical to improving timeliness.[90]

74. The pre-filing study dispute resolution process provided in the Commission's existing regulations[91] is seldom used. Commenters cite various reasons for this. Some say it is because the decision of the Director of the Office of Energy Projects (OEP) is not binding.[92] Others suggest that the absence of specific study criteria in the regulations creates uncertainty that leads parties to continue attempts to negotiate study requirements until after the application is filed.[93] Some Federal and state agencies indicate that they do not use the process because the Commission only considers the need for information to support its own decisions, which may be different from the information these agencies require for a complete record to support the exercise of their own authorities.[94] HRC notes that the current rules do not provide for resolution of disputes between the applicant and NGOs. A few other commenters, mostly from the industry, state that the existing process, or the existing process with minor modifications, works well enough.[95]

75. Commenters generally support the establishment of a more clear and effective dispute resolution process.[96] There are, however, substantial differences concerning the details of what that process should be. It is helpful to use the IHC dispute resolution proposal as a frame of reference to discuss these differences.

existing projects, is the baseline for analysis in our NEPA documents. We have also stated however that, while it does not change the focus our analysis, reliable information on pre-project conditions may help to inform our decisions about what environmental enhancement measures may be appropriate for a new license. *See* City of Tacoma, 67 FERC ¶ 61,152 (1994), *reh'g denied,* 71 FERC ¶ 61,381 at pp. 62,491–92 (1995).

[86] SCE, p. 19.

[87] Wisconsin DNR, Washington, VANR, NMFS.

[88] NHA, Idaho Power, Van Ness, Kleinschmidt, PG&E, Southern, SCE.

[89] *See* Section III.E.2 and proposed 18 CFR 5.14 and 5.15.

[90] *See* Section III.D.1, *supra.* Also, NRG, DM&GLH, Skancke, New York Rivers, Oregon, NMFS.

[91] *See* 18 CFR 4.38(b)(5) and (c)(2); 16.8(b)(5) and (c)(2).

[92] NHA, PG&E, NYSDEC, Van Ness, AMC, WPPD, SCE, Kleinschmidt.

[93] California, Oregon, Long View

[94] Interior, NYSDEC, NCWRC.

[95] SCE, Idaho Power, EEI, NAH, ADK.

[96] NHA, PRT, APT, CRITFC, NYSDEC, CTUIR, Menominee, AMC, Oregon, SCE, Kleinschmidt, WPPD, KCCNY, HRC, AmRivers, HRC, Menominee, Wisconsin DNR, EEI, Idaho Power, DM&GLH, APT, Duke, PG&E, NCWRC, Long View, Xcel, CSPPA. Some industry commenters recommend that any new dispute resolution process be incorporated into any and all licensing process options. Duke, EEI, Van Ness. This is discussed in Section III.H.

76. In brief, the IHC proposal provides for the Commission staff to approve with any necessary modifications a proposed information-gathering and study plan developed by the applicant in consultation with interested parties. Parties other than Federal or state agencies with mandatory conditioning authority under FPA Sections 4(e) and 18, or state or Tribal water quality certification agencies, as well as the applicant, would be bound by the decision. Agencies and tribes with conditioning authority would be able to dispute the decision with respect to studies pertaining to the exercise of their authorities.

77. The dispute would be submitted to a panel consisting of a person nominated by the Commission staff, a person nominated by the agency or tribe referring the dispute, and a third person with the appropriate technical qualifications selected by the other two panel members from a list of such persons maintained by the Commission. The panel would review the request with reference to the study criteria discussed above. There would be an opportunity for other participants to submit information. If the panel concluded that the study request satisfied the criteria, it would recommend to the Director that the applicant be required to conduct the study. The Director would review the recommendation pursuant to the study criteria and, unless he disagreed with the panel's conclusions, would direct the applicant to do the study. This process would be available when the applicant's study plan is first considered and if disputes arise during periodic status reviews. Several commenters indicated that the IHC proposed dispute resolution process appears to be reasonable, subject to various suggested modifications.[97] One frequent comment was that whatever dispute resolution mechanism is adopted, basic fairness requires that it be available to every participant that has a dispute with an applicant.[98]

78. Various commenters oppose the panel approach, or aspects of it, for different reasons. Some state that it would be costly, unwieldy, or take too long, and that the Commission has sufficient in-house expertise to resolve study disputes.[99] PG&E is concerned that the panelists would not be directly involved in the proceeding and thus lack familiarity with the complexities of individual cases. Some object to the absence of the applicant from the panel, because it has expertise and will bear the cost of whatever studies are required.[100] EEI and others suggest that a panel would diminish the Commission's authority by placing too much decisional input into the hands of an entity in which the Commission has a minority role.[101] GLIFWC is concerned that a panel format might result in inconsistent resolution of disputes concerning the same or similar issues, and suggests that consistency could be ensured by having one neutral third party serve on multiple panels concerned with the same or similar issues. CDWR recommends that any panel have the applicant and resource agency or Tribe as the disputants, with the Commission staff acting as the third party.

79. Licensees further assert that if the licensee must be excluded from the panel, then it should in any event be afforded a role in the process. Suggestions in this regard include provisions for informal dispute resolution before a panel is convened,[102] the panel convening a technical conference,[103] and an opportunity for review and comment on the recommendation of any advisory panel before the Director resolves the issue.[104]

80. A few commenters object to the Commission resolving study disputes. Some states and HRC aver that deference to the expertise of state agencies requesting studies is appropriate, and that disputes over studies requested by agencies with mandatory conditioning authority should be resolved by those agencies.[105] States also emphasize that they are not bound by Commission decisions with respect to information needs in support of water quality certification, and if the result of a dispute resolution process at the Commission was not favorable, they would use their own processes to deny the certification or otherwise ensure that they receive the requested data.[106] The Menominee Tribe states that the Commission staff lacks impartiality and, recommends with GLIFWC that the panel's recommendation be binding on the Commission staff as well as other parties. Wisconsin DNR recommends development of a dispute resolution mechanism in which the Commission staff acts as a facilitator.

81. There is also no consensus on whether dispute resolution should be mandatory, and whether the result should be binding. Some licensee commenters would require stakeholders to refer an issue in dispute during prefiling consultation, and if they failed to do so, would not be able to make the study recommendation or raise the dispute after the application is filed.[107] Other commenters appear to support continuation of dispute referral as optional.[108]

82. Some commenters would make the result of the process binding.[109] NHA and NRG would make participation mandatory, which NHA explains would provide a needed incentive for parties to become involved during pre-filing consultation, but would make the result advisory.[110] Under HRC's collaborative process proposal, the participants would negotiate their own case-specific dispute resolution procedures with respect to study requests and various other aspects of the process, such as a plan and schedule for processing the application, as well as the contents of a draft license application, NEPA document, and mitigation and enhancement measures. HRC would have study disputes ultimately resolved by a panel which closely resembles the panel we are proposing.

83. We conclude that in order to be effective, a dispute resolution process should be timely, impartial, transparently based on a thorough consideration of the applicable facts and

[97] NYSDEC, Van Ness, Duke, CRITFC, NYRU, GLIFWC, BRB–LST, WPPD, Michigan DNR, California.

[98] SCE, Kleinschmidt, WPPD, SCE, Skancke, AMC, EEI, PG&E, NYRU, Van Ness, Oregon, VANR, Southern, Idaho Power, ADK. NHA's proposal is that only applicants, agencies, and tribes be able to initiate dispute resolution, but that any party could participate.

[99] SCE, Kleinschmidt, Southern, Idaho Power, EEI, NHA. SCE adds that if the Commission lacks internal expertise with respect to a particular issue, it can obtain it by contract.

[100] Duke, Xcel, Kleinschmidt, Wausau, Georgia Power, WE Energies, Skancke, CDWR, Idaho Power.

[101] Wausau, FPL.

[102] NYSDEC.

[103] Duke, AEP, Van Ness.

[104] Duke.

[105] California, Oregon, Michigan DNR, Washington, HRC.

[106] California, Oregon, Michigan DNR, Washington, NYSDEC.

[107] This concept is frequently expressed in terms of there being a ban on post-application information requests, or a rebuttable presumption against them, or that they be allowable only under extraordinary circumstances. EEI, Idaho Power, NHA, Xcel.

[108] PG&E. NHA's dispute resolution proposal would appear to be voluntary but, if it was invoked, would in effect be binding on requesters because they could not later revisit the issue except in extraordinary circumstances. It would not appear to be binding on the applicant.

[109] SCE, EEI, PG&E, Van Ness, Snohomish.

[110] NHA, NRG. Only a few commenters focused on the NRG dispute resolution process. In general, they approved that the process would be open to all participants, but expressed concern that criteria for dispute resolution were not defined, and that its advisory nature would result in no clear resolution. EEI, PG&E, Van Ness, Snohomish.

decision criteria, and binding. We believe a modified version of the IHC proposal may satisfy these requirements.

84. Timeliness can be ensured by building into the dispute resolution process deadlines for action by all parties. The advisory panel approach offers the best assurance of impartiality and acceptance by including a panel member with appropriate technical expertise agreeable to the other panelists, and who has no conflicts of interest. Transparency can be assured by requiring a disputing party, the advisory panel, and the Director to explain how they applied the facts in light of the study criteria.

85. We propose to establish what is essentially a two-step dispute resolution process. In Step 1, the applicant files a draft study plan for comment; the participants (including Commission staff) meet to discuss the draft plan and attempt to informally resolve differences. The Commission then approves a study plan with any needed modifications after considering the applicant's proposed plan and the participants' comments (preliminary determination). Step 2 would be a formal dispute resolution process, including the panel described above, in which resource agencies with mandatory conditioning authority under FPA sections 4(e) and 18, and states or tribes with water quality certification authority under Clean Water Act section 401, would be able to dispute the preliminary determination to the extent their dispute concerns requests that directly implicate their exercise of that conditioning authority.[111] If more than one agency or tribe filed a notice of dispute with respect to the preliminary determination's decision on a study request, the disputing agencies or tribes would select one representative to the panel, to ensure that balance is maintained.

86. This proposed process distinguishes between agencies and tribes with conditioning authority, to extent they are exercising that authority, and participants whose role is to make recommendations pursuant to FPA sections 10(a) and 10(j), NHPA section 106, or other applicable statutes. Agencies or tribes exercising mandatory conditioning authority have a duty to make reasoned decisions based on substantial evidence, and their decisions are subject to judicial review. Agencies, tribes, or members of the public that make recommendations to the Commission bear no such responsibility. The proposed integrated process ensures information and study requests of the latter entities receive appropriate consideration, in the context of early NEPA scoping and a process for developing the study plan provides all parties with opportunities to participate in study plan development meetings and file comments.

87. We recognize that the applicant, by virtue of the fact that it must conduct any studies required by the Commission and implement the license, has a special interest in the outcome of any dispute resolution process involving the Commission and agencies or Tribes with mandatory conditioning authority. For that reason, the dispute resolution process we are proposing provides an opportunity for the applicant to submit to the panel information and arguments with respect to a dispute.

88. The advisory panel procedure does not delegate any of the Commission's decisional authority, because the panel is advisory only. Nor do we think it is necessarily too costly or unwieldy if properly managed. All costs of panel members representing the Commission staff and the agency or tribe which served the notice of dispute would be borne by the Commission, agency, or tribe, respectively. The third panel member will serve without compensation, except for certain allowable travel expenses to be borne by the Commission.[112]

89. We agree with GLIFWC that consistency of analysis is desirable in a dispute resolution process, but anticipate that project-specific facts will play a large role in the recommendations of the panels. We are not moreover able to provide any assurance that third party panelists, who volunteer their services, would be willing to appear on multiple panels during any given period of time. Finally, the recommendations of each panel and the Director's decision will be matters of public record, and may inform the thinking of future panels applying the same criteria to issues concerning the same resource.

90. NYSDEC and AMC state that to ensure the neutrality of the third panel member, that person should be from academia and not tied to any licensee's financial interests, or should be some other wholly independent party. We believe that neutrality will be sufficiently ensured by the fact that the third panelist must be agreed upon by the panelists representing the Commission staff and the disputing agency or tribe. The Commission requests comments on the proposed study dispute resolution process, and in particular on the efficacy of the advisory panel.

91. California and others[113] recommend that disputes be resolved by persons local to the project region, on the ground that local officials have a better understanding of the issues and states cannot afford to send staff to Washington, DC This is a matter best decided in the context of each proceeding.

e. Other Recommended Uses for Dispute Resolution

92. Menominee recommends that the study dispute resolution concept be extended to other elements of the licensing process, such as disagreements on draft license articles (which we propose to include with draft NEPA documents),[114] and whether the Commission is in compliance with NEPA. Dispute resolution with the Commission staff is not appropriate for such matters, which are solely within the Commission's authority, and to which rehearing and the opportunity for judicial review apply. Dispute resolution procedures may however be appropriate in the context of settlement negotiations among parties where a settlement agreement could include recommendations to the Commission concerning the content of license articles.

93. Some industry commenters suggest that disputes over material issues of fact related to issuance of mandatory conditions should be the subject of ''mini-hearings'' upon the applicant's request. They contend this would improve the overall record of the proceeding for judicial review, and that the prospect of a fact-finding hearing would make agencies with conditioning authority more likely to settle cases and less likely to impose unreasonable conditions.[115] We do not propose to change our general practice of resolving most hydroelectric licensing matters by means of notice and comment procedures. We agree, however, that there may be merit in using evidentiary hearings before administrative law judges in licensing proceedings, and will give due consideration to any requests for such hearings.[116]

[111] *See* proposed 18 CFR 5.12.

[112] The allowable travel expenses are defined at 31 CFR part 301. In brief, travel allowances are the same as those of a salaried employee traveling on behalf of the Commission. The Commission has procedures and guidance in place for such situations.

[113] Oregon, CRITFC.

[114] *See* Section III.D.4.d.

[115] EEI, NHA, Idaho Power, DM&GLH, APT, Duke.

[116] Proposed 18 CFR 5.27(e) explicitly provides for this.

2. Consultation and Coordination With States

94. The current regulations require prospective license applicants to include state fish and wildlife agencies and water quality certification agencies in pre-filing consultation,[117] and for license applicants to include with their application proof that they have received, applied for, or received waiver of water quality certification.[118] Notwithstanding, the Section 603 Report identified lack of timely state water quality certification as one of the principal causes of delay in licensing.[119]

95. The causes for this appear to vary from state to state. States, including those which participated in the December 2001 regional workshops, indicate that they have very limited resources to devote to such applications; that disputes over the scope of studies required for a complete certification application are not resolved before the license application is filed; or that their water quality certification process is designed to use the Commission's final NEPA document to the extent possible as the basis for acting on the water quality certification application.[120]

96. Not surprisingly, then, there was broad agreement in the regional workshops with states and among the commenters that early collaboration or coordination by all parties with state agencies that issue water quality and CZMA consistency certification is essential to any effort to improve the timeliness of licensing.[121] Many commenters recommend that these state agency processes be fully integrated with the Commission's processes from the beginning of pre-filing consultation through license issuance. This could include joint Federal/state environmental issues scoping and preparation of environmental documents as cooperating agencies.[122] CRITFC states coordination of Federal and state regulatory agency action would also be enhanced by river basin-wide analyses that take into account all relevant state and tribal water quality standards and tribal water rights.

97. The proposed integrated licensing process is designed to maximize coordination with state processes under the CWA and CZMA, and to aid the ability of state agencies to timely provide recommendations pursuant to FPA sections 10(a)(1) and 10(j). State agencies would be consulted with respect to development of the applicant's Commission-approved study plan; invited to participate in an initial public meeting for the purpose, among others, of coordinating all regulatory processes to the extent possible; and could participate in the Commission's NEPA scoping activities. They would also be eligible for dispute resolution with respect to information and study requests pertaining to the exercise of their water quality conditioning authority.

98. There are limits to what the Commission can do to coordinate its activities with state processes. Some states for instance indicate that the problem of incomplete water quality certification applications when the license application is filed would be eliminated if the Commission would treat states as ''full partners'' in the licensing process, which appears to entail, among other things, complete deference to state agency study requests.[123] The Commission may in fact require an applicant to complete all of the information-gathering or studies requested by a state agency, but must exercise its independent judgement with respect to each study request in light of the comprehensive development standard of FPA section 10(a)(1), the Commission's policies, and any other applicable law. Several states moreover commented that they cannot be bound by the result of any Commission decisions on information and study needs insofar as their independent water quality certification authority is concerned, and if they are not satisfied with the information resulting from the Commission-approved study plan or dispute resolution process, they will deny water quality certification or use their other authorities to require the information they believe is needed.[124] Finally, some states oppose participation as cooperating agencies for NEPA document preparation, on the ground that would conflict with their own policies or procedures.[125]

99. EEI, NHA, and Idaho Power recommend that the Commission consider developing state-specific agreements comparable to programmatic agreements with State Historic Preservation Officers (SHPO), which might address such matters as coordination of schedules and key information needs of the states.[126] As previously noted,[127] the Commission has already begun consultations with the states to determine whether such memoranda or other actions to enhance coordination, apart from the proposed rule, may be useful. Our staff is also engaged in more focused discussions with some states where numerous relicense applications are expected to be filed over the next decade.

100. Some states[128] indicate that their ability to timely issue water quality and coastal zone management plan consistency certifications would be greatly enhanced if the Commission directly funded their participation in the licensing process or used its authorities to require license applicants to fund their participation. The Commission does not have authority to directly fund state agencies. Licensee funding of Federal and State agencies is governed by FPA section 10(e)(1), which requires the Commission to collect in annual charges from licensees the Commission's administrative costs and * * * any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this part * * *.

101. This clause was added by section 1701(a) of the National Energy Policy Act of 1992 (EPAct).[129] Section 1701(a)(2) of EPAct also added the following proviso:

Provided, That, subject to annual appropriations Acts, the portion of such annual charges imposed by the Commission under this subsection to cover the reasonable and necessary costs of such agencies shall be available to such agencies (in addition to other funds appropriated for such purposes) solely for carrying out such reviews and shall remain available until expended;

102. The Commission has construed this provision to require an annual appropriation for this purpose by

[117] 18 CFR 4.38(a)(1) and (a)(2);and 16.8(a)(1) and (a)(2).

[118] 18 CFR 4.38(f)(7); 16.8(f)(7).

[119] *See* Section 603 Report, pp. 38–43.

[120] WDOE, Oregon, SCDWQ, Michigan DNR, California, Wisconsin DNR. EPA states that the limited resources of some states relative to their Clean Water Act responsibilities could make it difficult for the state agency to stay involved over the term of a multi-year license proceeding.

[121] Washington, California, SCE, Salish-Kootenai, NHA, HLRTF, Oregon, Interior, PG&E, PCWA, Idaho Power, PacifiCorp, SCDWQ, APT, Michigan DNR, HRC, Wisconsin DNR, EEI, NYSDEC, Maryland DNR, NMFS.

[122] NRG, Washington, Idaho Power, PacifiCorp, SCE, Oregon, Michigan DNR, HRC, KCCNY, CDWR, HRC, Idaho Power, PacifiCorp, NHDES, PG&E.

[123] California, NYSDEC, VANR, Wisconsin DNR.

[124] California, Oregon, Michigan DNR, Wisconsin DNR, WDOE.

[125] *See* Section III.D.4.b.

[126] EEI, NHA, Idaho Power. EEI states that any drafts of any such agreements should be submitted to licensees for comment.

[127] *See* Section II.B., supra.

[128] Washington, Oregon, Michigan DNR. California recommends that the Commission reimburse intervenors for attorneys' fees and travel expenses.

[129] Pub. L. 102–486, 106 Stat. 2776–3133 (Oct. 24, 1992).

Congress in the budgets of the applicable agencies or the Commission.[130] Congress has not made such appropriations for the states.[131]

a. Timing of Water Quality Certification Application

103. Some commenters suggest that the timing of the water quality certification application should be governed by events other than the filing of the license application. Although the specific time frames that they recommend for filing are divergent, the common theme appears to be that the water quality certification application should be filed when the record with respect to water quality issues is complete.[132] California recommends that the certification application be filed after the Commission's draft NEPA document is issued. New York Rivers and Oregon suggest that regardless of when the certification application is filed, the Commission should not begin counting the one-year period for state action until the state deems the application to be complete.[133]

104. The current rule requiring a license applicant to apply for water quality certification by the time the license application is filed rests on the assumption that water quality data issues will have been resolved during pre-filing consultation. The integrated licensing process we are proposing provides greater opportunity for that to occur. The applicant and water quality certification agencies will know well before the application is filed what related data the Commission will require to be filed with it. Thus, states should be in a position to inform license applicants if additional information will be required by the state for water quality certification purposes before the application is filed, and applicants should be prepared to begin obtaining any such information and assembling a water quality certification application before the license application is filed.

105. For those applications developed using the traditional process, we propose to modify the rules to require the applicant to show that it has applied for, received, or received waiver of water quality certification no later than the date for responses to the Commission's REA notice. The later date may be appropriate for the traditional process because there is no Commission-approved pre-filing study plan, and therefore less reason to assume that water quality information and study issues will have been resolved when the application is filed. Similar considerations may apply to the ALP, where the parties have much flexibility with respect to the timing of the development of the record. On the other hand, and as discussed below, we are proposing to incorporate full public participation and mandatory, binding dispute resolution into the traditional process, which should result in pre-filing resolution of water quality data issues far more often than is currently the case. The Commission therefore requests comments on whether the deadline date for filing the water quality certification application should remain when the license application is filed for both the traditional process and ALP.

3. Consultation With Indian Tribes

106. The September 12, 2002 Notice asked how a new licensing process can better accommodate the authorities, roles, and concerns of Indian tribes. The principal concerns expressed by tribes are that tribal sovereignty and authorities need to be recognized in the process, that the Commission have government-to-government relations with the tribes, and that the tribes be consulted and their issues identified very early in the process.[134]

107. A few tribes suggest that the existence of a government-to-government relationship means that only the Commission should consult with the tribes, and that the tribes should not have to deal directly with license applicants.[135] Most tribes, however, recognize the crucial role of the license applicant in consultation and development of studies and the license application, and accordingly offer recommendations intended to improve coordination and development of information with the applicant as well as the Commission. A few licensees suggest that if consultations between the tribes and license applicants become unproductive, or at the tribe's request, all consultation with the tribe should be through the Commission.[136]

108. Several tribes state that there is a lack of understanding by the Commission of its roles and responsibilities as a trustee for tribes, and of individual tribal concerns, and a lack of understanding by tribes of the Commission's processes. They also state that our regulations are not clear with respect to the rights, roles, and responsibilities of Indian tribes.[137] Several suggest that the Commission establish either an office of tribal affairs or otherwise dedicate a specific person or persons as a tribal liaison.[138]

109. The relationship between the United States and Indian tribes is defined by treaties, statutes, and judicial decisions. Indian tribes have various sovereign authorities, including the power to make and enforce laws, administer justice, and manage and control their lands and resources. Through several Executive Orders and a Presidential Memorandum,[139] departments and agencies of the Executive Branch have been directed to consult with Federally recognized Indian tribes in a manner that recognizes the government-to-government relationship between these agencies and tribes. In essence, this means that consultation should involve direct contact between agencies and tribes, in a manner that recognizes the status of the tribes as governmental sovereigns.

110. As an independent regulatory agency, the Commission functions as a neutral, quasi-judicial body, rendering decisions on license applications filed with it, and resolving issues among parties appearing before it, including Indian tribes. Therefore, the Commission's rules and the nature of its licensing process place some limitations on the nature and type of consultation

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[130] *See* Testimony of Commission Chair Elizabeth Moler before the Subcommittee on Energy and Water Development of the House Committee on Appropriations (April 21, 1993); Letter from Chair Elizabeth Moler to Hon. John Dingell of August 2, 1994.

Certain Federal agencies have for a number of years submitted ''reasonable and necessary costs'' to the Commission for inclusion in annual charges. Some licensees have challenged the eligibility of these costs for recovery in annual charges and the Commission's policies concerning the evidentiary showing necessary for the costs to be recovered. These matters are currently in litigation. *City of Tacoma, et al.* v. *FERC,* DC Cir. 01–1375 (filed August 28, 2001).

[131] Although the Commission's existing authority in this regard is constrained, we are well aware of the funding challenges faced by many states and are interested in pursuing with them in other contexts how the Commission might be able to assist them in meeting this challenge.

[132] NHA, Idaho Power, NYSDEC, SCE (when the REA notice is issued); CDWR (one year prior to scheduled license issuance); HRC, NCWRC (following issuance of a draft or final NEPA document).

[133] NYRU, Oregon.

[134] Menominee, GLIFWC, CRITFC, Salish-Kootenai, St. Regis Mohawks, PRT, HETF; CTUIR; St. Regis Mohawks, NF Rancheria, Catawba, APT, KT, Nez Perce.

[135] Choctaw, PRT, Shoshone.

[136] PacifiCorp, NHA.

[137] *E.g.,* Nez Perce.

[138] CRITFC, Salish-Kootenai, NF Rancheria, Menominee, KT, GLIFWC, BRB–LST, Quinault, CTUIR, Shoshone.

[139] Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (issued November 6, 2000); Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (issued May 14, 1998); Presidential Memorandum, Government-to-Government Relations with Native American Tribal Governments (issued April 29, 1994), reprinted at 59 Fed. Reg. 22,951; Executive Order 12875, Enhancing the Intergovernmental Partnership (issued October 26, 1993).

that the Commission may engage in with any party in a contested case.

111. The Commission believes that the licensing process will benefit by more direct and substantial consultation between the Commission staff and Indian tribes. Because of the unique status of Indian tribes in relation to the Federal government, it may be beneficial to increase direct communications with tribal representatives in appropriate cases. The type and manner of consultation with Indian tribes should fit the circumstances. Different issues and stages of a proceeding may call for different approaches, and there are some limitations that must be observed. However, there are a number of steps that the Commission staff can take to improve consultation with Indian tribes on matters affecting their interests in hydroelectric licensing.

112. For example, it may be mutually beneficial for the staff and Indian tribes to engage in some high-level meetings to discuss general matters of importance, rather than issues involved in specific licensing proceedings. These could be arranged for particular tribes, regions, or river basins, if appropriate.

113. There are also opportunities for greater involvement with Indian tribes before a licensing proceeding has begun. Indian tribes may be reluctant to consult with the applicant, preferring to meet directly with the Commission staff. In these cases, the staff should consider some means of direct communication with the tribe, at an appropriate level, to explain the consultation process and the importance of tribal participation, and to learn more about the tribe's culture. Because it would occur before the proceeding commences, the Commission's rules regarding off-the-record communications would not apply. Our proposal to establish a tribal liaison, discussed below, responds to this concern.

114. Once the licensing proceeding has begun, the Commission's rules prohibiting off-the-record communications must be observed. These rules apply in any case in which an intervenor disputes a material issue, and they generally prohibit off-the-record communications relevant to the merits of a proceeding between Commission employees involved in the decisional process and interested persons outside the agency. Thus, they would prevent Commissioners or Commission staff from consulting privately in a contested proceeding with representatives of any party to the proceeding, whether on a government-to-government basis or in any other capacity, to discuss matters relevant to the merits of the proceeding.

115. However, under special exemptions provided in the rules, communications concerning the staff's preparation of environmental documents are permitted, as are communications with tribal and other governmental representatives if the tribe or government agency is not a party to the proceeding. In each instance, the staff must promptly disclose the substance of the communication and place it in the record for the proceeding. Using these guidelines, Commission staff can work to ensure that consultation with Indian tribes is both meaningful and appropriate to the circumstances of particular cases. For example, staff might consider holding a high-level ''kick-off'' meeting or invitation to participate, or a separate scoping meeting with tribal representatives.

116. As part of the licensing process, the Commission must also comply with section 106 of the NHPA. Section 106 requires the Commission to take into account the effect of its actions on historic properties, and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The NHPA expressly provides that traditional cultural properties that are of religious or cultural significance to Indian tribes can be considered historic properties. It also requires the Commission to consult with representatives of Federally recognized Indian tribes that attach religious or cultural significance to those properties, if they may be affected by the licensing action. The Council's regulations provide that this consultation ''should be conducted in a sensitive manner respectful of tribal sovereignty,'' and ''must recognize the government-to-government relationship between the Federal government and Indian tribes.''[140] If direct communication between Commission and tribal representatives occurs as part of the Section 106 process, it must be conducted in compliance with the Commission's rules regarding off-the-record communications.

117. A few tribes recommend that consultation be limited to Federally recognized tribes.[141] The Commission is sensitive to the fact that Federal recognition establishes certain rights that are not enjoyed by non-recognized tribes, and that there may be competing interests at stake. For instance, some Federally recognized tribes have authority to issue water quality certification under section 401 of the Clean Water Act with respect to actions that require a Federal license and are located on reservation lands. Consultation under section 106 of the NHPA differs, depending on the tribe's status.[142] The Council's regulations concerning government-to-government consultation apply only to Federally recognized tribes. However, they also provide for consultation with non-Federally recognized tribes as consulting parties that have an interest in the proposed licensing action.[143] If a Federally recognized tribe has an approved Tribal Historic Preservation Officer (THPO), the Commission is required to consult with the THPO instead of the SHPO for undertakings that affect historic properties on tribal lands. We intend for the licensing process to be conducted in a manner consistent with the proper exercise of such rights, and that tribes be consulted at the earliest practicable opportunity. We believe, however, that members of unrecognized tribes can have Native American cultural resources that should also be respected by the Commission. We will therefore direct our staff to consult with non-recognized tribes that choose to participate in license proceedings.

118. The tribes and other commenters made many suggestions intended to enhance early consultation. These include: Commission contact with tribes before the due date for an existing licensee's NOI to better understand tribal issues and to ensure that the tribes are fully aware of the licensing process;[144] Commission and tribe-only meetings to ensure confidential treatment of cultural resources and for NEPA scoping;[145] development with each tribe of a plan for consultation with that tribe;[146] more timely notice of deadlines and flexible deadlines;[147] facilitation services for consultation between tribes and the Commission or tribes and license applicants;[148] and that comprehensive information on future license expirations and the state of any existing consultations be posted

[140] 36 CFR 800.2(c)(2)(ii)(B) and (C).

[141] Choctaw, Catwaba.

[142] As used in the NHPA and the Council's regulations, the term, ''Indian tribe'' refers to Federally recognized tribes; thus, only a Federally recognized tribe has the right to participate in Section 106 consultation. See *http://www.achp.gov/regs_tribes.htm.*

[143] 36 CFR 800.2(C)(5) and 800.3(f).

[144] PacifiCorp, PRT.

[145] NF Rancheria. Several tribes broadly stated their concern that the licensing process protect the confidentiality of cultural resources; *e.g.*, Choctaw, PRT, Shoshone, NF Rancheria.

[146] SCE, Idaho Power, EEI, NHA, NEU, Nez Perce.

[147] CRITFC, St. Regis Mohawks.

[148] Idaho Power, PRT, Nez Perce.

on the Commission's website or made available on CD ROM.[149]

119. Our proposed rule and related administrative actions should substantially address these concerns. First, we are establishing the position of Tribal Liaison. The Tribal Liaison will provide a single, dedicated point of contact and a resource to which Native Americans can go regardless of the proceeding or issue. Also, as discussed above, the Commission will be contacting Indian tribes likely to be interested in a relicense proceeding in a time frame consistent with the advance notification to initiate discussions concerning consultation procedures.

120. Under section 304 of the NHPA, the Commission is required to withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy, risk harm to the property, or impede the use of a traditional religious site by practitioners. The Council's regulations reflect this requirement.[150] The Commission also has regulations and practices in place that address the tribes' confidentiality concerns. For instance, all applicants must delete from any information made available to the public specific site or property locations if their disclosure would create a risk of harm, theft, or destruction of archeological or Native American cultural resources.[151] In addition, the regulations provide specific procedures to follow when requesting privileged treatment of documents that are either filed with the Commission or submitted to the Commission staff.[152]

121. The Commission agrees that Commission-sponsored facilitation services, which some non-tribal commenters also recommend, may be useful in certain proceedings, as discussed in the preceding section. The most appropriate facilitation or dispute resolution techniques are a matter best considered in the context of specific proceedings.

122. Some tribes suggest that, because original construction of dams caused impacts to tribal resources for which there was no compensation under an original license or other pre-license construction authorization, the licensing process should provide a means to identify and mitigate for those past impacts.[153] The Commission has no authority under the FPA to require restitution or to assess damages. Moreover, the FPA does not mandate that all past environmental damage caused by a project be ''mitigated'' in a relicensing proceeding. Our responsibility at relicensing is to determine whether, and under what conditions, to issue a new license for a hydroelectric project. As previously stated, we use existing environmental conditions as a baseline for our analysis, and do not attempt to re-create a hypothetical pre-project environment. However, past environmental effects are relevant in assessing cumulative effects and in determining what measures are appropriate to protect, mitigate, and enhance natural resources for the new license term. This approach is reasonable, and complies with both NEPA and the FPA.[154]

123. Some tribes state that the geographic scope of the Commission's public interest analysis with respect to tribal cultural and other resources should not be limited to resources located within the project boundary, but should extend to project impacts wherever they may occur.[155] The Commission agrees that there may be instances where project impacts occur outside of an existing or proposed project boundary, and that appropriate mitigation for these impacts, as well as possible changes to the project boundary, should be considered in the licensing process. For historic properties, this is taken into account in defining the project's ''area of potential effect'' during the consultation process under section 106 of the NHPA. Such matters are best dealt with in the context of specific proceedings.

124. Some commenters indicate that project-related social and economic issues raised by tribes should be addressed in the licensing process and should be given the same weight as developmental values.[156] We agree that social and economic impacts of proposed projects on tribal resources, positive and negative, need to be addressed through consultation pursuant to our trust responsibility, the NHPA section 106 process, and in the Commission's NEPA and decisional documents. The enhanced consultation measures provided by the proposed integrated process generally, and for Indian tribes in particular, should ensure that such issues are fully considered.

125. A few tribes suggest that tribal water rights should be specifically addressed in the licensing process.[157] Issues concerning tribal water rights have rarely been raised in licensing proceedings, mainly because the Commission does not adjudicate water rights. The Commission's practice, when such water rights are in dispute, is that if it issues the license, it makes the license subject to a reservation of authority to reopen the license to make any changes that may be required once the water rights issues are resolved.[158] This safeguard has worked in the past and should continue to adequately protect tribal water rights.[159]

126. Some commenters state that the Commission's guidelines for the development of Historic Properties Management Plans (HPMPs) are confusing with regard to how Section 106 is fulfilled and the degree of applicant responsibility. They request clarification of the distinction between government-to-government relations and consultation.[160] The Commission and the Council issued these guidelines jointly in May 2002.[161] They are intended to assist license applicants in preparing their HPMPs, which the Commission includes as a license condition, and provide for the licensee's management of historic properties during the license term. These plans, while related to historic preservation, are not necessarily part of the Section 106 process. Rather, a programmatic agreement or memorandum of agreement entered into as part of the Section 106 process will usually include provisions requiring the applicant to prepare and implement an HPMP. The HPMP is often prepared in consultation with the SHPO, THPO, or Indian tribe, and may include provisions for consultation with the tribes during the term of the license. The Commission's role is to review and approve the HPMP. Thus, any consultation with tribes that may occur during the preparation or implementation of the HPMP ordinarily

[149] NF Rancheria, PRT.

[150] *See* 36 CFR 800.6(a)(5) and 800.11(c).

[151] 18 CFR 4.32(b)(3)(ii) and 16.7(d)(5)(ii).

[152] 18 CFR 388.112.

[153] Shoshone, NW Indians.

[154] *See* Section III.D.1.c

[155] CTUIR, Menominee, Shoshone.

[156] Shoshone, CTUIR.

[157] CTUIR, CRITFC.

[158] *See, e.g.*, Idaho Water Resources Board, 84 FERC ¶ 61,146 (1998) (reserving authority to modify the license to reflect the outcome of pending state water right proceeding in which an Indian Tribe claimed an implied Federal reserved water right). Similarly OWRB states that license conditions should be developed consistent with interstate water compacts enacted as Federal law. It is not the Commission's intention to interfere in any way with such compacts, and we are not aware of any instance where there has been an inconsistency.

[159] *See Covelo Indian Community* v. *FERC*, 895 F.2d 581, 586 (9th Cir. 1990).

[160] SCE, NHA. SCE states that Section 106 consultation should begin when the applicant files a draft HPMP.

[161] Guidelines for the Development of Historic Resources Management Plans for FERC Hydroelectric Projects (May 2002), *http://www.ferc.gov/hydro/docs/hpmp/pdf.*

would be with the applicant or licensee, rather than with the Commission. In some cases, consultation pursuant to Section 106 may be combined with consultation concerning the preparation of an HPMP. As discussed above, the Commission will attempt to be responsive to tribes' requests for direct communication, if this can be accomplished in a manner consistent with the Commission's rules governing off-the-record communications.

127. Some tribes state that they should be consulted on the identity of, or have the right to approve, all persons performing tribal cultural resources analyses pursuant to section 106 of the NHPA. Tribes may also have professional expertise in this area, and some indicate that qualified tribal members should be hired for such studies whenever possible.[162] We agree that it is appropriate for license applicants to consult with tribes concerning the identity and qualifications of persons conducting studies with respect to a tribe's cultural resources. However, license applicants need to have flexibility in the hiring of consultants. We do not believe that applicants should be required to obtain a tribe's approval before engaging a consultant, or to engage a consultant based on tribal membership. It would however appear to be in a license applicant's best interests to consult affected tribes concerning these matters. We note that, in many proceedings, licensees have reached agreements with affected tribes in which the tribes have a voice in the selection of consultants.[163]

4. Environmental Document Preparation

a. Cooperating Agencies Policy

128. The Commission's policy has for a number of years been that an agency that has served as a cooperating agency in a proceeding may not thereafter intervene in that proceeding. The reason for this policy is that staff of a cooperating agency is treated in some respects as though it were Commission staff, including having conversations and exchanging information that may not be put in the record, just as Commission staff shares predecisional analyses and information internally. To allow a cooperating agency to intervene in a proceeding would make it a party privy to decisional information not available to other parties, in violation of our rule prohibiting *ex parte* communications.[164]

129. Other Federal agencies, environmental groups, and some states urge us to revisit this policy.[165] They contend that the policy is inefficient because it discourages other agencies from becoming cooperating agencies, which forces the preparation of multiple NEPA documents. Interior suggests that if the Commission were to issue non-decisional NEPA documents, that is, documents which are purely analytical and make no substantive recommendations, there should be no concern about off-the-record communications regarding the merits of the proceeding.[166]

130. EEI and Idaho Power assert however that reversing the policy would violate the Administrative Procedure Act (APA).[167] They state that APA section 557(d)(1) prohibits in an adjudicatory proceeding any ''interested person'' from outside the agency from making any ''*ex parte* communication relevant to the merits of the proceeding'' to a decisional employee.[168] This is correct, but the APA defines a ''person'' as ''a public or private organization *other than an agency*.'' [169] (emphasis added), and defines an agency, with certain exceptions not relevant here, as ''each authority of the Government of the United States.'' [170] Thus, the APA does not prohibit *ex parte* communications between Federal agencies.

131. Our policies concerning *ex parte* communications exceed the requirements of the APA in this regard, because the Commission is concerned that its procedures be fundamentally fair in both appearance and reality. On this score, EEI and Idaho Power cite Order No. 607, where the policy against cooperating agency intervenors articulated above was codified, and *Arizona Public Service*, where it was affirmed. They assert that nothing has changed in this regard, and add that reversing the policy would afford a dissatisfied cooperating agency a ''second bite at the apple'' by permitting it to seek rehearing and judicial review of Commission orders.[171] EEI intimates that permitting cooperating agency relationships would enable other Federal agencies to prevent or hinder the issuance of economically vital gas pipeline certificates and unduly influence the Commission's public interest balancing under FPA section 10(a)(1).[172] Finally, they argue that NRG's proposal would be impractical because it would require all communications to and from a cooperating agency to be placed on the record, which would be administratively unworkable and inimical to the free exchange of ideas essential to the cooperating agency relationship.

132. We conclude that reversal of our policy (and the concomitant revision of our *ex parte* rules) as it applies to Federal agencies would increase the likelihood that Federal agencies with mandatory conditioning authority would be willing to act as cooperating agencies, which would better enable these agencies and the Commission to coordinate the exercise of their separate responsibilities. This should also better enable cooperating Federal agencies with conditioning authority to develop a complete record, reduce duplication of effort among cooperating agencies, and may help to focus discussion of scientific and policy issues. To be weighed against these benefits is the potential for prejudice to other parties that would not have access to some information and decisional communications between the Commission and the cooperating agency.

133. On balance, we are persuaded that the potential benefits are significant and the likelihood of prejudice to other parties is minimal if an appropriate disclosure requirement is established. The Commission and other Federal agencies with mandatory conditioning

[162] Shoshone, Kalispel.

[163] Examples include relicense proceedings for the Condit Project No. 2342, Box Canyon Project No. 2040, Lake Chelan Project No. 637, Rocky Reach Project No. 2145, Klamath River Project No. 2082, and Baker River Project No. 2150.

[164] *See* Rainsong Company, 79 FERC ¶ 61,338, at p. 62,457, n.18 (1997); Order No. 596, Regulations for the Licensing of Hydroelectric Projects, FERC Statutes and Regulations ¶ 31,057 at p. 30,644 (1997). When the Commission modified its *ex parte* communication rules in 1999, it noted, but made no change to, this policy. *See* Order No. 607–A, FERC Statutes and Regulations ¶ 31,112 n. 50 and p. 31,931 n. 41. *See also* Arizona Public Service Co., 94 FERC ¶ 61,076 (2001) (denying request for late intervention by the Forest Service and rejecting arguments that the new *ex parte* rule does permit a cooperating agency to also be an intervenor).

[165] HRC, SCE, NYSDEC, WDOE, DOI. NRG also supports this proposal, but would put limits on the bases upon which a cooperating agency that subsequently became an intervenor could seek rehearing or judicial review, and would include disclosure requirements with respect to discussions concerning license articles or terms and conditions, and ''any communication necessary for the completeness of the record.'' *See* Attachment B to September 12, 2002 Notice, p. 10.

[166] This suggestion is inconsistent with our *ex parte* regulations, which define ''relevant to the merits'' as ''capable of affecting the outcome of a proceeding, or of influencing a decision, or providing an opportunity to influence a decision, on any issue in the proceeding,'' subject to certain narrowly drawn exceptions not applicable here. *See* 18 CFR 385.2201(b)(c)(5).

[167] 5 U.S.C. 551–559.

[168] 5 U.S.C. 557(d)(1).

[169] 5 U.S.C. 551(2).

[170] 5 U.S.C. 551(1).

[171] EEI, Idaho Power.

[172] *See* EEI, pp. 45–46.

authority must support their conditions with reasoned decisions based on facts in the public record. A cooperating agency that supplies the Commission with study results or other information presumably does so because it believes the material adds value to the decisional record and deliberations. No cooperating agency should therefore object to a requirement that all study results and other information provided to the Commission also be served on parties to the proceeding. Deliberative communications however involve the interpretation and application of study results and other information. It is appropriate for such communications among cooperating agencies to remain off-the-record in order to foster the free and timely exchange of ideas. As long as the analyses upon which the Commission and a cooperating agency ultimately rely are set forth in their respective NEPA or decisional documents, they will be subject to challenge in comments on draft NEPA documents, on rehearing of decisional orders, and on judicial review. Under these circumstances, no other party should be prejudiced.

134. We therefore propose to modify our policy by permitting Federal cooperating agencies to intervene, subject to a requirement that all studies and other information provided by a cooperating agency to the Commission be promptly submitted to the Secretary and placed in the decisional record. Decisional communications such as working drafts of NEPA documents and associated communications would continue to be exempt from disclosure. Accordingly, we also propose to modify the text of the ex parte regulations to this effect.[173] The exception to the APA's prohibition on ex parte communications for Federal agency communications does not extend to states or Indian tribes. Our policy will therefore remain in place with respect to these entities.

b. NRG Cooperating Agency Proposal

135. NRG proposes that the Commission and Federal or state resource agencies that regularly participate in the Commission's licensing processes develop a general Memorandum of Understanding (MOU) that would establish a procedural framework in which the resource agencies would be cooperating agencies in the preparation of a non-decisional NEPA document; that is, one which would analyze resource impacts of the applicant's proposal and reasonable alternatives, but would not include any recommendations on license articles or terms and conditions. The MOU would cover procedures for cooperation, dispute resolution, and decision-making. Each MOU would be supplemented by a project-specific Memorandum of Agreement.[174]

136. The Commission supports in general the use of cooperating agency NEPA documents as a means of increasing efficiency. We are not however prepared to structure the integrated licensing process proposal based on the assumption that there will be a cooperating agency relationship in all or most cases. Many considerations go into an agency's decision to seek or not to seek such status. These include staff availability, the nature and extent of the agency's responsibilities with respect to licensing, and the policies and practices of the potential cooperating agencies.[175] Moreover, where the Commission and resource agencies have found it to their mutual benefit to be cooperating agencies, project-specific agreements have generally been timely concluded so that the processing milestones were not prejudiced. Nevertheless, the Commission acknowledges that there may be benefits to having general MOUs with resource agencies to address coordination issues that cut across projects, and we will continue to explore that approach outside the context of this rulemaking.

c. Non-Decisional NEPA Documents

137. Under NRG's proposal for non-decisional NEPA documents, the Commission and cooperating agencies would separately publish records of decision explaining the basis for their respective decisions, based on the record in the joint NEPA document and other relevant materials in their public record. NRG believes there would be little controversy with regard to the scientific analyses, which would eliminate the need for the Commission and cooperating agencies to conduct separate NEPA reviews. It suggests that this might reduce the average time of license proceedings.

138. NRG's proposal enjoys some support from across the spectrum of interests.[176] HRC states that having a non-decisional NEPA document will help to ensure transparent decision-making, and that non-decisional documents are needed to ensure that license articles and terms and conditions are not negotiated between agencies without public input. It is not however universally embraced. EPA, citing the regulations of the Council on Environmental Quality,[177] and NMFS support a decisional NEPA document with a Commission-preferred alternative. ADK suggests that using two documents for what is now encompassed in one document might lead to inefficient sequential processing.

139. The Commission does not propose to adopt a practice of issuing non-decisional NEPA documents as proposed by NRG. Although we propose to change our existing policy with respect to intervenor status for cooperating agencies, there is no assurance that cooperating agency agreements will become the norm, as discussed above. We are moreover less optimistic than NRG concerning the likelihood of conflicts over scientific analyses. The ubiquity of study disputes and conflicts over interpretation of study results, quite apart from decisions over how they might translate into PM&E measures, leads us to believe that the resource impact analysis sections of NEPA documents will continue to be controversial.

140. The Commission does however propose to modify the structure of its NEPA documents to better separate resource impact analysis from decisional analysis. In the future, all of our NEPA documents will confine decisional analyses pursuant to FPA sections 10(a) and 10(j) to clearly delineated sections at the close of the document. In this way, any other Federal or state agency or Tribe with mandatory conditioning authority will, whether or not it is a cooperating agency, be able to use those parts of the resource impact analysis not in dispute in whatever documents it prepares pursuant to its legislative mandates.

d. Draft License Articles

141. Federal agencies and some commenters recommend that the Commission issue draft license articles for comment in connection with draft NEPA documents. They believe this will result in better license orders and license articles, and that issuance of draft articles would help to foster settlement agreements.[178]

[173] Proposed new 18 CFR 385.2201(g)(2).

[174] *See* NRG proposal summary, September 12, 2002 Notice, Attachment B, p. 9. NHA supports the NRG proposal in this regard. CRITFC and Nez Perce support joint-agency NEPA documents in concept, but are concerned that the NRG's proposal might exclude the tribes, or somehow impose inappropriate limitations on appeal rights.

[175] Michigan DNR and WDOE object to the inclusion of state agencies as cooperating agencies, on the ground that would subject the state agency to schedules established by the Commission, which they aver would conflict with other Federal or state laws and regulations.

[176] HRC, AmRivers, SCE, CRITFC.

[177] *See* 40 CFR 1500, *et seq.*

[178] HRC, Menominee, BRB–LST.

142. The Commission has previously issued draft license articles only in the extraordinary circumstance of a lengthy proceeding in which the Commission's jurisdiction was at issue and where it was concluded that issuance of draft license articles might provide assurance to the operator of existing, previously unlicensed facilities that a Commission license would not undermine its ability to operate the project in a manner consistent with certain state laws affecting project operations.[179]

143. We propose to attach to the draft NEPA document for comment the preliminary terms and conditions of any Federal or state agency with mandatory conditioning authority, plus additional draft articles proposed by the Commission to be required pursuant to FPA section 10(a)(1).[180] This will provide the parties with more specific information concerning the staff's licensing recommendations. Where no draft NEPA document is issued, we would include draft license articles and preliminary terms and conditions with the environmental assessment. Parties would have an opportunity to file comments before the Commission issued an order acting on the license application. We also propose to begin this practice for applications developed under the traditional process and ALP.[181]

e. Endangered Species Act Consultation

144. Currently, neither Interior and Commerce rules nor Commission rules specifically address how the ESA section 7 consultation process is to be integrated into the Commission's licensing process.[182] NHA and others state that ESA consultation is often deferred until the end of the licensing process, causing delay and disruption. The ITF prepared a report on this subject[183] containing recommendations for integrating consultation in the context of the traditional process, but which also includes an outline of a process beginning at the time the NOI is filed.[184] These commenters state that the ITF recommendations have met with little success, and suggest that it is because the ITF recommendations are unenforceable. WPPD recommends that the Commission, Interior, and Commerce cooperate in developing joint rules to integrate ESA Section 7 consultation with the licensing process. Interior and NMFS recommend that the integrated process regulations identify the key steps and requirements for completing ESA consultation.

145. The proposed integrated licensing process encourages early ESA consultation, and is consistent with the ITF Report on section 7 consultation. First, it encourages an applicant to request designation as the Commission's non-Federal representative at the time it files its NOI and distributes its Pre-Application Document.[185] The proposed process also provides a vehicle for all parties to make their issues and information needs known from the beginning. This, in conjunction early development of a process plan for coordinating regulatory processes, a Commission-approved study plan, binding dispute resolution process, periodic status reports, a high standard for requesting additional data and studies following an initial status report on studies and information gathering, a recommendation to include a draft Biological Assessment (BA) in the draft license application, and requirement for applicants that are designated non-Federal representatives to include a draft BA in their license application, should help to ensure that ESA consultation proceeds on the same track as the rest of the process. We acknowledge however that timely completion of ESA consultation has been an ongoing issue, particularly concerning projects in the Pacific Northwest, and we are open to working with the Departments of Interior and Commerce to develop additional means of effecting improvements in this area.

f. Fish and Wildlife Agency Recommendations

146. The proposed integrated process rules incorporate the Commission's existing practices with respect to consideration of fish and wildlife agency recommendations made pursuant to the Fish and Wildlife Coordination Act and FPA section 10(j), with minor modifications to the timing of any meetings that may occur in order to ensure that the 10(j) process is fully compatible with the proposed application processing milestones.[186]

g. National Historic Preservation Act Consultation

147. Consultation pursuant to section 106 of the National Historic Preservation Act has not been a significant source of delay in licensing. The few parties who addressed section 106 recommend that such consultation begin early.[187] We agree. The proposed integrated process includes SHPOs among the entities to be consulted and encourages applicants to request to initiate section 106 consultation when the NOI is filed.[188]

5. Public Participation

148. The traditional process regulations concerning prefiling consultation focus on the applicant's interactions with agencies and Indian tribes. Potential license applicants are required to conduct only one public meeting prior to filing the license application,[189] and the draft license application is required to be served only on agencies and tribes.[190] Thus, unless an applicant voluntarily consults with the public, the traditional process often causes identification of issues and study requests from the public to be delayed until after the license application is filed. Commenters from across the spectrum of interests agree that identifying NGO issues and study requests as early as possible is important to alleviating this source of delay.[191]

149. We agree that improving public participation in pre-filing consultation is essential to the success of an integrated licensing process, and believe that the traditional process regulations should also be revised in this regard. The specific provisions for enhancing

[179] *See* Hudson River-Black River Regulating District, Project No. 2318, letter dated February 8, 2002.

[180] This would encompass conditions based on 10(j) recommendations. We do not propose to attach the standard L-Form license articles (*See* 54 FPC 1799–1928 (1975)) to draft or final NEPA documents, as we have consistently rejected requests to modify these articles, which are intentionally broad, in the context of specific license proceedings.

[181] NYSDEC states that project operational effects cannot be fully understood before a new project is built, so license articles should be included to determine what a new project's actual impacts are, and to reserve authority to modify the project as needed to meet resource goals. Licenses very often include monitoring requirements and every license includes a standard form article reserving our authority to modify the license to respond to fish and wildlife concerns. Specific post-licensing articles are, of course, a matter best determined in the context of project-specific proceedings.

[182] The joint Interior and Commerce regulations implementing the ESA are found at 50 CFR part 402.

[183] *Interagency Task Force Report on Improving Coordination of ESA Secton 7 with the FERC Licensing Process. http://www.ferc.gov/hydro/docs/interagency.htm.*

[184] ITF ESA Report, Figure 1.

[185] Proposed 18 CFR 5.1.

[186] The Commission also proposes to make non-substantive modifications to the existing 10(j) process rule at 18 CFR 4.34(e), so that the language of that section will better track the statutory provisions.

[187] ACHP, Menominee.

[188] Proposed 18 CFR 5.1.

[189] 18 CFR 4.38(b)(3); 16.8(b)(3).

[190] 18 CFR 4.38(c)(4); 16.8(c)(4).

[191] EEI, PG&E, NRG, SCE, NHA, Michigan DNR, HRC, NYSDEC, Idaho Power, NF Rancheria, Caddo, ADK, AmRivers, AMC, SCL, C–WRC, CDWR, Interior, PG&E, HETF, PCWA, APT, DM&GLH, Skancke, NYRU, Oregon, Wausau, Salish-Kootenai, HLRTC, PREPA, Kleinschmidt, Xcel, California, Michigan DNR, WPPD, RAW, GLIFWC, Virginia, NE FLOW, Wehnes, RAW, AmRivers, CRWC, WDOE.

public participation are discussed below.[192]

6. Processing Schedules and Deadlines

150. Many commenters express the view that timeliness would be improved if the Commission established schedules and deadlines, including for itself, and ensured that the deadlines are firm to the extent possible.[193] Beyond that general principle, there is little agreement.

151. Licensees fault resource agencies for most delays and favor strict application of deadlines to the actions required of agencies, tribes, and the public, particularly the filing of recommendations and Federal agency mandatory conditions, on the basis that strict deadlines provide an incentive to timely participation.[194] Resource agency, Tribal, and NGO commenters identify tardy or incomplete filings (particularly studies) by licensees as the principal reason firm schedules and deadlines are needed.[195]

152. Commenters from all camps favor the establishment of schedules and deadlines, with strict compliance required by others, but also agree that ''default'' or ''generic'' time frames need to be flexible to accommodate case-specific complicating factors and settlement agreements. There is also general agreement that the time frames in the IHC and NRG proposals, including the time period from NOI to filing of the license application, are too short, except for very simple cases.[196]

153. There is broad agreement that improving outcomes is equal in importance to reducing licensing process time and expense, particularly where 30–50 year license terms are involved, and that strict adherence to schedules may compromise the development of study plans and the conduct of studies, hamper public or Tribal participation, and be inconsistent with state water quality certification processes.[197] Various commenters similarly state that it is inappropriate to make assumptions concerning the number of field seasons required to compile data on current conditions or to complete other studies, because the time needed to obtain representative data may be affected by drought, ESA consultation, insufficient years of existing data where anadromous fish with multi-year return cycles are involved, and many other factors.[198] Others suggest that the time frames should be adjusted as necessary to accommodate instances where multi-project or basin-wide environmental analyses are necessary.[199]

154. Commenters' perceptions of the nature of, and procedures for, study plan development and the conduct of studies also influence their perceptions of timeliness. HRC and RAW, for instance, appear to view these matters as a collaborative endeavor in which consensus is required. A number of agency, tribal, and public commenters similarly advocate that schedules in individual cases should be negotiated by the Commission staff with the stakeholders,[200] or via agreements between the applicant and the parties.[201]

155. In this connection, HRC states that NGOs with minimal staff are often trying to keep up with many projects in a region, so predictability of schedules and deadlines is an important tool for them to effectively allocate resources. It adds that the traditional process provides no advance warning of notices calling for comments, recommendations, responses to draft NEPA documents, and the like, which makes their task difficult. Some Indian tribes similarly state that they have very limited resources, and that tribal decisional hierarchies and communications channels may require longer to obtain a decision than in other organizations.[202]

156. The Commission agrees with the commenters that firm schedules and deadlines are important to keep the licensing process moving, and also that there will be instances where a schedule or deadline will need to be revised. As of July 2002, the Commission's practice has been to publish a licensing schedule with each application tendering notice, and these schedules are updated periodically as required. The integrated process we are proposing also includes time frames for all critical process steps, from filing of the NOI to issuance of a license application, that will form the basis for development of case-specific detailed schedules.[203]

157. The elements of the proposed integrated process should make it easier to establish and maintain a timely schedule. Early issue identification and voluntary commencement of information-gathering are fostered by the advance notification of license expiration; Commission contact with potentially affected tribes; existing information, and process options; and the more complete informational requirements of the Pre-Application Document. Pre-filing consultation following the Applicant's NOI will be improved by full Commission staff and public participation; a Commission-approved study plan binding on the applicant which provides for interim review of study results; and a study dispute resolution process for agencies with mandatory conditioning authority. There would moreover be no opportunity after the application is filed for parties to request additional information or studies. Under these conditions, every interested entity has powerful incentives to timely participate.

158. We encourage all parties to consult in a collegial manner on the development of information and study plans (indeed, on all aspects of licensing). We are not however disposed to adopt a process, such as HRC appears to advocate, that relies almost entirely on consensus as the basis for approving a study plan and schedule. That approach would be incompatible with the three to three and one-half year time frame from the NOI to filing of the application, and would be certain to

[192] *See* Section III.F.1.

[193] Ameren/UE, NHA, HLRTC, Ameren/UE, APT, SCE, AmRivers, HRC, NMFS, RAW, NRG, California, Wisconsin DNR, Interior, PG&E, NCWRC, Southern, Duke, C–WRC, WPPD, Wyoming.

[194] NHA, HLRTC, Ameren/UE, APT, SCE, Southern, Xcel. SCE states that the Commission should decline to accept late-filed study requests and establish an ''extraordinary conditions'' test for any study requests following the first field season of studies as incentives to timely agency action.

[195] California, Oregon, Michigan DNR, HRC, NMFS, NYSDEC, CRITFC.

[196] EEI, PG&E, HETF, HRC, NHA, EEI, SCE, Snohomish, Xcel, WPPD, California, Oregon, Michigan DNR, NYSDEC, CRITFC, WGFD, Catawba, Choctaw, GLIFWC, BRB–LST, Menominee, KT, Interior. PG&E states that when parties work together to identify issues and study plans, three years is sometimes not enough to go from early issue identification to a filed license application, and that a five year process is realistic only for a simple proceeding.

[197] *E.g.,* Oregon, HRC, California, NW Indians, Menominee, NHA, Idaho Power.

[198] HRC, Wisconsin DNR, AmRivers, AMC, NMFS, NHDES, Menominee, GLIFWC, NMFS, Washington, Xcel.

[199] GLIFWC, Interior, NCWRC.

[200] Ameren/UE, AmRivers, HRC, NMFS, RAW, DM&GLH, SCL, Washington, ADK, Michigan DNR. Some commenters recommend that the rules provide for a ''default'' time frame that would apply to simple, non-controversial applications that can be adjusted to accommodate water quality certifying agency data requirements or the complications posed by individual cases. HRC, Michigan DNR, Wisconsin DNR, PG&E, Washington.

[201] HRC.

[202] Catawba, Choctaw, Menominee.

[203] Some commenters recommend that time be built into schedules to accommodate intra-agency appeals of Federal or state mandatory terms and conditions. APT, NHA, EEI. Our long-standing practice is to include final conditions in licenses and to reserve authority to modify the license depending if the licensee successfully appeals the conditions. *See e.g.,* Southern California Edison Co., 77 FERC ¶ 61,313 (1996). That policy, which permits the licensee to seek extensions of time to comply with such conditions if the burden of interim compliance would be unduly onerous, recognizes the authority of the conditioning agency while protecting the interests of the licensee during the pendency of the appeal.

ensure the filing of many applications requiring significant additional information. An applicant-proposed study plan and schedule, subject to review and comment, and appropriate dispute resolution provisions, is much more likely to ensure timeliness without sacrificing the quality of the record.

7. Settlement Agreements

159. Commenters offered very broad support for the inclusion in our regulations of specific provisions to accommodate settlement agreements, regardless of which licensing process is employed.[204]

a. Flexibility in Processing Schedules

160. One view shared by nearly all commenters is that the Commission should allow more flexibility in schedules to accommodate settlement discussions. They state that settlement agreements generally best represent the public interest because they are consensus-based, may avoid Federal/state conflicts, can reduce delays and litigation, and result in limited resources being devoted to providing environmental benefits rather than transaction costs. They indicate that the Commission's recent practice of denying requests for temporary suspension of the licensing process pending settlement negotiations is hindering settlement agreements.[205] NHA and Oregon recommend that the licensing process provide for a 12–18 month ''time-out'' for settlement negotiations, based on the joint request of the parties. California urges that flexibility in this regard is necessary in order to recognize the responsibilities of Federal and state agencies with mandatory conditioning authority.

161. The Commission strongly favors settlement agreements, which provide the opportunity to eliminate the need for more lengthy proceedings if the parties reach an agreement on the issues that is compatible with the public interest and within our authority to adopt. The integrated licensing process should provide substantial encouragement to settlement agreements by helping to ensure early identification of issues and production of information useful to parties considering whether to engage in settlement negotiations. We do not however see a need for specific provisions in our regulations to provide a ''time out'' or other flexibility in scheduling to accommodate settlement negotiations. General assertions to the contrary notwithstanding, we see no evidence that suspending Commission actions in the licensing process is more likely to result in a settlement agreement. Rather, our experience indicates that the prospect of near-term Commission action in the form of a draft or final NEPA document, or a license order, is more likely to spur the parties to resolve their differences. We are also concerned that suspending the licensing process to accommodate settlement negotiations may cause parties to view settlement negotiations as a means to obtain an open-ended suspension of the licensing process. We will, however, continue to consider requests for brief suspension of the Commission's processes on a case-by-case basis.

b. Timing and Conduct of Settlement Negotiations

162. HRC recommends that the Commission require the parties to a proceeding to meet at certain critical times in the process to explore interest in and opportunities for settlement. Others oppose this recommendation on the grounds that settlement negotiations require substantial commitments of time and can be costly, and that any such requirement is unnecessary because the parties will know whether and when the effort makes sense in the context of each proceeding.[206] RAW states that settlement discussions should begin before the licensing proceeding begins. NHA suggests that appropriate junctures for such discussions are during formation of the study plan and preparation of a draft license application. NMFS recommends that settlement discussions be barred until all information requests have been satisfied.

163. We are not inclined to require parties to meet for this purpose, or to predetermine any particular point in the process where settlement should be considered. Settlement agreements have been conducted, and agreements filed, at every step in the licensing process, from the pre-filing consultation stage to after issuance of a license order. The parties themselves are in the best position to determine whether and when it makes sense to consider settlement negotiations. It may however be beneficial to encourage the applicant at the time the draft license application is filed to include with that filing a non-binding statement of whether or not it intends to make an offer to engage in settlement negotiations.[207] Such a provision might encourage all parties to consider whether the proceeding is in a favorable posture with regard to potential settlement negotiations. The Commission requests comments on this matter.

164. NMFS recommends that we require parties to establish ground rules and a communications protocol before settlement discussions begin. C–WRC similarly suggests that the rules should provide for stakeholder charters to accompany settlement discussions. The Commission agrees in general that settlement discussions should proceed based on mutual understandings concerning the scope of, and procedures for, negotiation. These commenters however offer no reason, and we see none, to limit the flexibility of parties to an individual proceeding with regard to the drafting of agreements, written or oral, in this connection.

165. NHA suggests that the ADR procedures established in Order No. 578[208] may be unduly formal and that the Commission's Dispute Resolution Service (DRS) staff could serve as facilitators rather than mediators.[209] Some commenters state that the Commission could assist settlement negotiations by providing training to stakeholders in interest-based negotiation processes[210] or by providing neutral facilitators or mediators to parties involved in negotiations.[211] The Commission's dispute resolution program encompasses all of these recommendations where circumstances are appropriate. The DRS is designed to encourage the use of ADR, train the Commission staff and other parties in its use, and, where appropriate, provide staff to serve as neutral facilitators of settlement negotiations. Under this program the Commission's administrative law judges have received

[204] EEI, SCE, Oregon, Kleinschmidt, NHA, Idaho Power, HRC, Wisconsin DNR, Interior, PG&E, AmRivers, NCWRC, Xcel, NYSDEC, NMFS, CRITFC, ADF&G.

[205] EEI, CRITFC, SCE, Oregon, Kleinschmidt, NHA, Idaho Power, HRC, Wisconsin DNR, Interior, PG&E, AmRivers, NCWRC, Xcel, NMFS, NYRU, NYSDEC, SCL, Idaho Power, CDWR, VANR, Troutman, Menominee, CTUIR, Xcel, Michigan DNR, NCWRC, WPPD, DM&GLH, Domtar, FPL, AMC, AW, California.

[206] NHA, PG&E, CDWR, NMFS.

[207] Alternatively, an applicant might make such a statement when all major information-gathering and studies are completed.

[208] Order No. 578 (1995), 60 FR 19494 (April 19, 1995), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,018 (April 12, 1995).

[209] In general, a facilitator is a person who works with the group members by providing procedural directions concerning how the group can move efficiently through the problem solving steps of the meeting and arrive at a jointly agreed-upon goal. More concisely stated, a facilitator's efforts are focused on process. A mediator also brings process skills to the group, but focuses in addition on helping the group member reach a mutually acceptable substantive resolution of the issues. This may involve working with the whole group or subsets of the group to explore interests and develop options that address the interests with the aim of reaching settlement.

[210] PacifiCorp.

[211] SCE, NHA, PG&E, NCWRC, Kleinschmidt, Michigan DNR.

training in service as third-party neutrals, and judges have served in that capacity in a number of hydroelectric proceedings. In addition, the Commission has provided various training programs in facilitation, mediation, and dispute resolution to its staff. In just the past few years, over 100 members of the Commission staff have completed training courses in various forms of ADR, and many staff members have put their skills to work in assisting collaborative licensing processes and settlement negotiations as mediators or facilitators.

166. Finally, NMFS states that the Commission should establish schedules for acting on settlement agreements. As noted above, we are already providing schedules for license application proceedings.

c. Guidance on the Content of Settlement Agreements

167. Several commenters stated that the Commission's rules should provide guidance concerning the Commission's policies on what kinds of settlement provisions are or are not acceptable,[212] or that the Commission should have a policy of deferring to settlement agreements in the absence of illegality.[213] Specific subjects on which commenters seek guidance include support for adaptive management programs for licenses,[214] mitigation measures in lieu of additional studies,[215] mitigation measures that occur outside of existing project boundaries or are beyond the Commission's authority to require,[216] and confidentiality agreements.[217]

168. The Commission strongly supports the efforts of parties appearing before it to settle their differences and propose to the Commission agreements to resolve pending proceedings in the public interest.[218] We make every effort to fully accept uncontested settlement agreements that are consistent with the public interest. Where settlements are contested, the Commission has an additional duty to protect the interests of non-settling parties and must ensure that agreements are fair and reasonable. Our conclusions concerning the compatibility of a settlement agreement with the public interest are informed by the comprehensive development standard of FPA section 10(a)(1) and the policies and practices we have adopted pursuant to that standard. This is not the same as the absence of illegality, and our responsibility to review the merits of each settlement agreement in this context is statutory and cannot be delegated to the settling parties.

169. Our practice is to incorporate into the license those provisions of an approved settlement agreement that are within the Commission's authority to enforce or, albeit not enforceable by the Commission, are required to be included because they are contained in a water quality certification issued pursuant to Clean Water Act Section 401 or mandatory terms and conditions issued pursuant to FPA Sections 4(e) or 18.[219]

170. We do not propose to include in the regulations statements endorsing in general terms any potential components of a settlement agreement, such as adaptive management plans, mitigation measures in lieu of studies, or mitigation measures that may occur outside of an existing project boundary. The Commission has approved all of these things in the context of specific settlement agreements, but only after considering the entire record of the proceeding and conducting the analyses required by applicable portions of the FPA, NEPA, ESA, NHPA, and any other applicable statutes.

E. Description of Integrated Licensing Process

1. Applicability

a. New and Original Licenses

171. The September 12, 2002 Notice solicited comments on whether there are issues unique to the processing of original license applications or new license applications that need to be addressed in an integrated licensing process. Most commenters suggested that studies associated with original licensing may require more time than studies for new licenses, owing to a lack of existing data and uncertainty with regard to the specific project proposal during pre-filing consultation. They recommend that an integrated licensing process, if it applies to original licenses, should be flexible in order to accommodate these considerations.[220]

172. The proposed integrated process would apply to original licenses as well as new licenses.[221] As detailed below, a potential applicant for an original license would be required to file an NOI. Although there is no statutory limit on the time between filing of the NOI and filing of an original license application, the time periods in the proposed rule between NOI and license application are roughly coincident with the three year period for which preliminary permits are issued. This should bring some additional pressure to bear on permit holders to timely develop their project proposals, which responds to the concerns of states such as Oregon that believe too much of their time is spent responding to ill-formed and highly speculative proposals under preliminary permits.[222] A few commenters suggest that it might be desirable to merge the integrated process and preliminary permit regulations,[223] but we see no reason the proposed rules cannot co-exist with the existing preliminary permit regulations. We would however modify our practice by including in each order issuing a preliminary permit language directing the permit holder to the requirements of new part 5. The Commission requests comments on whether the proposed

[212] APT, HRC, Interior, AMC, PG&E, Wisconsin DNR.

[213] Washington, Interior, NYSDEC, NMFS. DM&GLH states that when a settlement agreement is accompanied by an applicant-prepared EA (APEA), the Commission should adopt the APEA, rather than prepare a separate NEPA document. While an APEA prepared in connection with a settlement agreement is certain to be helpful to the Commission's analysis, the Commission cannot delegate its NEPA responsibilities to applicants or settling parties.

[214] RAW, NYSDEC, Oregon, Michigan DNR.

[215] Xcel, Southern, NHA.

[216] Oregon, Michigan DNR.

[217] SCE, NHA.

[218] 18 CFR 385.602 (g)(3). *See also* City of Seattle, WA, 71 FERC ¶ 61,159 (1995), *order on reh'g,* 75 FERC ¶ 61,319 (1996); Consumers Power Company, 68 FERC ¶ 61,1077 (1994); P.U.D. No. 2 of Grant County, WA, 45 FERC ¶ 61,401 (1988); Long Lake Energy Corp., 34 FERC ¶ 61,225 (1986).

[219] In Erie Boulevard Hydropower LP, 88 FERC ¶ 61,176 (1999), we identified the types of settlement provisions that are beyond our authority to enforce because they apply to non-jurisdictional entities. These typically include provisions which govern relations among parties to the settlement agreement, such as dispute resolution, and the procedural practices of such groups. *See also* Avista Corporation, 90 FERC ¶ 61,167 (2000) and 93 FERC ¶ 61,116 at p. 61,329. Until recently, the Commission declined, as a matter of policy, to enforce such provisions against licensees. That policy was reversed in Erie Boulevard Hydropower, LP and Hudson River-Black River Regulating District, 100 FERC ¶ 61,321, at p. 62,502 (2002).

[220] HRC, Michigan DNR, NMFS. HRC also notes that a license application for a new project might also involve regulatory requirements not applicable to a new license application, such as a dredge and fill permit from the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 344. Only ADK specifically recommends that the integrated licensing process apply to original licenses.

[221] The proposed rule would not apply to applications for non-power licenses, because they are an interim measure until a separate state, municipal, interstate, or Federal agency assumes regulatory supervision over the lands and facilities involved when a licensee proposes to cease power generation. They are, in essence, a form of license surrender.

[222] Where a potential applicant is genuinely interested in submitting a license application, but circumstances are such that additional time is needed to develop the specific licensing proposal, it may be appropriate to grant a waiver or extension of the pertinent 18 CFR part 5 regulations.

[223] NHA, Interior.

integrated process should apply to original license applications.

b. Competition for New Licenses

173. One matter that has received very little attention is whether a non-licensee competitor for a new license for an existing project should be subject to the same regulatory requirements under the integrated process as existing licensees. The proposed integrated process regulations would also apply to such competitors, except that they would not be required to file a notification of intent. We have twice previously considered and rejected recommendations to require potential competitors to file notices of intent,[224] and we see no reason to revisit the matter again.

2. Process Steps

174. HRC states that the existing licensing process regulations are confusing because they require the reader to cross-reference sections in parts 4 and 16, and proposes that any integrated licensing process regulations be sequential in form; that is, consist of a series of steps from beginning to end. The proposed regulation text does just that and should make the process easily understood,[225] but necessarily includes some cross-referencing to sections of parts 4 and 16.[226]

a. NOI, Process Schedule, and Study Plan Development

175. The NOI would continue to be due between five and five and one-half years prior to expiration of the license. It would be accompanied by the Pre-Application Document,[227] which the potential applicant would serve on resource agencies, tribes, and the public. The Applicant could at that time also request to be designated as the Commission's non-Federal representative for purposes of consultation under the ESA and Magnuson-Stevens Act,[228] or to initiate consultation under NHPA Section 106.

176. The integrated licensing process is proposed to be the default process. A potential applicant for an original or new license requesting to use the traditional process or ALP would have to file a request to do so when it files its NOI and Pre-Application Document. It would, at the same time, have to issue public notice of any request to use the traditional process or ALP in order to ensure that the general public has an opportunity to respond.[229]

177. Filing of the NOI and Pre-Application Document would mark the commencement of the integrated process proceeding. Commission staff would be assigned to the proceeding at that time.[230] The Commission would issue public notice of the filing and of a public meeting and site visit. The purposes of the public meeting would be to review existing environmental conditions and resource management goals, review existing information, initiate NEPA scoping, consider the advisability of cooperating agency relationships, and develop a schedule that, to the extent possible, coordinates all applicable regulatory processes and results in an approved study plan (including any dispute resolution) no later than a year after the NOI is filed. The participants' comments and information requests would be due following the public meeting and site visit. That same notice would also include a decision on any request to use the traditional process or the ALP.

178. For applications developed using the integrated process,[231] the potential applicant would file, following comments in response to the notice, a revised Pre-Application Document and a proposed information-gathering and study plan following comments in response to the notice.[232] That would be followed by the Commission's NEPA Scoping Document 1 (SD1), comments on SD1 and the applicant's proposed study plan, and a meeting to discuss the proposed study plan and seek informal resolution of study disagreements.[233]

179. Following the study plan meeting, the applicant would file for Commission approval a revised study plan, including a description of informal efforts made to resolve study disputes and explaining why the applicant rejected any of the stakeholder information and study requests. The Commission would issue a preliminary determination on the revised study plan, describing any modifications to the plan as proposed.[234]

180. The study plan would be deemed approved as provided for in the preliminary determination and the Director would issue an order directing the Applicant to implement the plan, except with respect to any parts of the proposed study plan that become the subject of the formal dispute resolution procedure.[235]

181. The dispute resolution procedure is designed to be concluded within 90 days. Federal or state agencies or Indian tribes with mandatory conditioning authority would be required to file any notice of dispute within 20 days. The Commission would within another 20 days convene one or more three-member dispute resolution panels to consider all disputes with respect to specified resource areas (*e.g.*, fisheries, recreation). Two of the panelists would represent the Commission and the agency that raised the dispute, respectively, and neither would have had any prior involvement with the proceeding. The third panelist would be selected by the other two panelists from among a list of technical experts, and would be required to certify that he or she has no conflicts of interest. The Commission requests comments on whether it may be appropriate in some circumstances for one panel to make recommendations with respect to disputes involving different, but related resources, such as fisheries and aquatic resources. The applicant would have 25 days from the notice of study dispute to file and serve on the panelists any information or argument with respect to the dispute.

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[224] *See* Order No. 513, 54 FR 23,756 (June 2, 1989), 55 FR 10,768 (March 23, 1990), p. 31,415, FERC Stats. & Regs. Regulations Preambles 1986–1990, ¶ 30,854 (May 17, 1989).

[225] Appendix C is a flow chart depicting the proposed integrated process. The flow chart appears in color on the Commission's website.

[226] Some commenters also suggested a wholesale restructuring of the regulations in which parts 4 and 16 would be combined. Part 16 is distinct from part 4 because the statutory provisions applicable to new licenses established in 1986 by ECPA are in numerous respects different from the requirements applicable to original licenses: The part 4 framework governs the many overlapping aspects (*e.g.*, application procedures, application contents, amendments) of the numerous types of authorizations (original, new, subsequent, minor, major, non-power, and transmission line licenses; small conduit and under 5 megawatt exemptions; amendments to same) that the Commission's hydropower program entails.

[227] *See* Section III.D.1.b, *supra.*

[228] Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(b) requires Federal agencies to consult with NMFS on any action that may result in adverse effects to essential fish habitat.

[229] *See* proposed 18 CFR 5.1 (Applicability, definitions, requirement to consult, process selection). NGOs likely to be interested in the proceeding should not be caught unaware in any event, because existing license expiration dates will be posted on the Commission's website.

[230] Commission staff would be responsible for filing comments and recommendations on information-gathering and study proposals, and in other respects have the same functions as most other stakeholders throughout the licensing proceeding.

[231] The remainder of the discussion in this section, unless specifically stated to be otherwise, pertains only to the proposed integrated process.

[232] Proposed 18 CFR 5.6 (Comments and information requests), 18 CFR 5.7 (Revised pre-application document), and 18 CFR 5.8 (Applicant's proposed study plan).

[233] Proposed 18 CFR 5.9 (Scoping document and study plan meeting); 18 CFR 5.10 (Comments and information or study requests); and 18 CFR 5.11 (Study plan meeting).

[234] Proposed 18 CFR 5.12 (Revised study plan and preliminary determination).

[235] *Id.*

182. No later than 50 days following the notice of dispute, the panel would make a written recommendation to the Director of Energy Projects. The panel would recommend that the Director require the applicant to conduct the requested information-gathering or study if the panel finds that the request satisfies the criteria set forth in the regulations. The Director would issue a decision within 70 days of the notice of dispute, either accepting the panel's recommendation or reaching a different conclusion that explains why the information and arguments before the panel do not support the panel's recommendation or explains why the recommendation is inappropriate as a result of pertinent laws, regulations, or Commission policies. The Director's decision would constitute an amendment to the approved study plan, and would be accompanied by an order directing the applicant to carry out the study plan as amended.[236]

b. Conduct of Studies

183. The proposed rule requires the applicant during the period of information-gathering and study to file status reports including study results and analyses to date. The first such report would be filed after the first season of studies or other appropriate time following the date of the preliminary determination. The status report would also include any proposals to modify the study plan and schedule in light of the results to date. The initial status report would be followed by a meeting with parties and Commission staff. Following the meeting, the Applicant would file a meeting summary and, if necessary, a request to modify the study plan. The Applicant's meeting summary and request to modify the plan, if any, would be deemed approved unless any party filed a notice of disagreement. The procedure for resolving these disagreements would not include a panel, but would rest on written submissions to the Director. Following responses to any notice of dispute, the Director would issue an order resolving the dispute.[237]

184. An updated status report would follow the first status report after the second season of studies, if any, or other appropriate time in light of the circumstances of the cases. It would be subject to the same review, comment, and dispute resolution procedures, except that any party requesting additional information or studies at this late point in the information gathering process would be required to show exceptional circumstances warranting acceptance of the request.[238] The Commission requests comments on whether participants should be permitted to make new information-gathering or study requests (as opposed to making requests for modification of ongoing studies, or to raise disputes concerning the implementation of, existing studies), following the updated status report.

185. The Commission also requests comments on whether there should be a requirement for parties to file written comments on the potential applicant's status reports prior to the required meeting, or whether the familiarity of the parties with the facts of the proceeding may make written comments at this juncture superfluous.

c. Draft Application to License Order

186. Following the updated status report, the Applicant would file the draft license application for comment by the parties and Commission staff. The draft application would be required to contain, insofar as possible, the same contents as a final license application.[239] Also, the form of Exhibit E, the environmental report, would be significantly different from the traditional Exhibit E because it would be prepared following the guidelines for preparation of an applicant-prepared environmental analysis.[240]

187. The Commission requests comments on whether the draft license application contents should be required to track the contents of the final application, or whether it would be preferable to require only the proposed revised Exhibit E, or any other materials, to be included. One drafting group also considered whether a draft license application should be filed at all, but reached no conclusions. The Commission also requests comments on whether, in lieu of filing a draft license application for comment, it would be a better use of the participants' time to continue informally working on the resolution of any outstanding issues, or whether other considerations weigh for or against a draft license application.

188. The participants and Commission staff would file comments on the draft license application, including recommendations concerning whether an environmental assessment is acceptable or an environmental impact statement is needed. Any commenter requesting additional information or studies in its comments would be required to show exceptional circumstances, and to address in its request certain criteria, as applicable to the facts of that case.[241]

189. We expect that in most cases the updated status report will indicate that all of the information required by the approved study plan, or all of the information required to support the filing of FPA Section 10(j) recommendations or mandatory terms and conditions or fishways, has been collected and distributed to the relevant agencies. In such circumstances, it may be appropriate for the parties to file preliminary 10(j) recommendations, terms and conditions, or fishway prescriptions, and for the Commission staff to make a preliminary response, including initial 10(j) consistency findings, to those filings. Were this to happen, it follows that the parties could appropriately be asked to file modified (*i.e.*, final) recommendations or terms and conditions in response to the Commission's notice of ready for environmental analysis, rather than following issuance of a draft environmental assessment or environmental impact statement, or an environmental assessment not preceded by a draft, as provided for in the proposed rule. If so, a step could be eliminated at the end of the process, and Commission action on the application could be rendered more timely.

190. The Commission requests comments on whether the Commission should in each case make a determination following the updated studies status report of whether the record is sufficiently complete to require filing of preliminary recommendations and terms and conditions with comments on the draft license application, filing of final terms and conditions in response to the REA notice, and elimination of an opportunity to file further revised recommendations or terms and conditions following the draft NEPA document, or environmental assessment, as applicable.

191. The Commission further solicits comment on how to ensure that resource agencies have an adequate opportunity to consider public comment on their proposed terms and conditions if such an approach were adopted, and how such an approach could be

[236] Proposed 18 CFR 5.13 (Study dispute resolution process).

[237] Proposed 18 CFR 5.14 (Conduct of studies).

[238] *Id.*

[239] Proposed 18 CFR 5.15 (Draft license application). In contrast, the existing regulations require the draft license application to include only responses to agency and tribal comments and study requests, the results of information-gathering and studies, and proposed environmental protection measures. *See* 18 CFR 4.38(c)(4).

[240] Proposed 18 CFR 5.17 (Application content). By contrast, *see e.g.*, the existing Exhibit E requirements of part 4, subpart F (Major Project—Existing Dam), 18 CFR 4.51(f).

[241] Proposed 18 CFR 5.15.

accommodated where the resource agencies are working cooperatively with the Commission on preparation of the NEPA document.

192. The application would be required to include the applicant's response to comments on the draft application and, with respect to any requests for additional information gathering or studies in the comments to which it agrees, either provide the requested information or include a plan and schedule for doing so. If the applicant does not agree to any additional information-gathering or study requests made in comments on the draft license application, it must explain the basis for declining to do so.[242] The application would also be required to include a copy of the water quality certification, a copy of the request for certification, or evidence of waiver of water quality certification.[243]

193. Within 14 days of the application filing, the Commission would issue public notice of the tendering of the application, including a preliminary schedule of major processing milestones.[244] Within 30 days, the Commission would make a determination with respect to any requests for additional information or studies made in comments on the draft license application.[245]

194. When all filing requirements are met and the approved study plan is completed, the Commission would issue a notice of acceptance and ready for environmental analysis, requesting comments, protests, interventions; recommendations, preliminary mandatory terms and conditions, and fishway prescriptions, and an updated schedule for the remainder of the proceeding.[246] Responses would be due within 60 days.[247]

195. Each draft EA or EIS, and EA not preceded by a draft, will include for comment draft license articles based on recommendations made pursuant to FPA Sections 10(a) (including 10(j) recommendations),[248] and preliminary mandatory terms and conditions and fishway prescriptions. If the application does not require a draft EA, the EA would be issued within 120 days of date for responses to the application acceptance and REA notice, with comments thereon due in 30–45 days, and modified terms and conditions due 60 days thereafter. The Commission would act on the application within 60 days following the date for filing modified terms and conditions.[249]

196. For applications requiring a draft NEPA document, the draft NEPA document would be issued within 180 days from the date responses are due to the acceptance and REA notice, with comments due in from 30 to 60 days. Modified recommendations, terms and conditions, and fishway prescriptions would be due within 60 days of the date for filing of comments on the draft NEPA document. The Commission would issue a final NEPA document within 90 days following the date for filing modified terms and conditions or fishway prescriptions. The Commission would act on the application within 90 days following issuance of the final NEPA document.[250]

197. An amendment to an application filed under part 5 would be governed by the same provisions that govern amendments to applications under the existing regulations.[251]

198. The Commission requests comments on which process steps in the proposed integrated process may require adjustment. The Commission also requests comments on which time frames, if any, should be specified in the regulations for purposes of guiding the development of a process plan and schedule (including studies), and which may not be appropriate for specification in the regulations, but rather should be developed entirely in the context of case-specific facts.

F. Improvements to Traditional Process and ALP

199. Various commenters propose that the traditional licensing process be modified to include various elements of an integrated licensing process or other features.[252] These include: Early public and agency input on issues and study design;[253] establishment of specific criteria for study requests;[254] the outcome of the existing pre-filing study dispute resolution to be binding on all stakeholders;[255] waiver of pre-filing consultation requirements; greater use of applicant-prepared NEPA documents; including process steps in the ALP; and moving NEPA scoping into the pre-filing consultation period.[256] In addition to draft license articles discussed above, we are adopting two of these recommendations; increased public participation and mandatory, binding dispute resolution.

1. Increased Public Participation

200. NGOs identify limited opportunity for public participation as a major problem in the traditional process,[257] and many licensees and other commenters agree.[258] American Rivers and Alabama Rivers also state that consultation meetings are often held at times and places that are inconvenient for unpaid volunteers. They recommend that applicants hold more consultation meetings on evenings and weekends when NGO volunteers are more likely to be available.

201. We agree that the traditional process needs to provide greater opportunity for public participation. Since the current regulations were established in 1989, the role of the public, in particular NGOs, has increased dramatically and their participation is often crucial to the negotiation of settlement agreements. Environmental groups, organizations representing recreation users, as well as local residents, consumer advocacy groups, and organizations representing ratepayers all have important interests to represent. We *see* no reason potential applicants should not make reasonable efforts to bring these entities into pre-filing consultation as early as possible, and for these entities to be involved in the development of study plans. We are therefore proposing to modify the existing pre-filing consultation regulations to that end.[259]

202. There is no need to modify the ALP with regard to public participation, since it already requires the applicant to include the public in pre-filing

[242] Proposed 18 CFR 5.16(e).

[243] Proposed 18 CFR 5.17(f).

[244] Proposed 18 CFR 5.18 (Tendering notice and schedule).

[245] Proposed 18 CFR 5.18(b).

[246] Proposed 18 CFR 5.21 (Notice of acceptance and ready for environmental analysis).

[247] Proposed 18 CFR 5.22 (Response to notice).

[248] These would not include standard form license articles. *See* Section III.D.4.d., *supra.*

[249] Proposed 18 CFR 5.23 (Applications not requiring a draft NEPA document).

[250] Proposed 18 CFR 5.24 (Applications requiring a draft NEPA document).

[251] Proposed 18 CFR 5.26 (Amendment of application).

[252] AMC, SCE, NHA, SCL, EEI, PREPA, California, Wisconsin DNR, CTUIR.

[253] HRC, AMC, California, SCE, NHA, Wisconsin DNR, SCDWQ, SCL.

[254] Study criteria are identified by SCE and NHA.

[255] SCE.

[256] SCL, Southern. Southern would also require the applicant to file a study plan for Commission approval following the issuance of a staff scoping document.

[257] HRC, ADK, AmRivers, C–WRC, KCCNY, CRWC, RAW, NE FLOW.

[258] NHA, SCE, PG&E, Southern. All of the industry-sponsored process proposals contemplate greater pre-filing participation by the public, although the degree of participation is not always clear. A few industry commenters suggest that the general public already plays too great a role in licensing and makes unreasonable study requests. They recommend that public participation be limited to local residents who own lands adjacent to project reservoirs or other persons similarly situated. Wausau, DM&GLH, Domtar.

[259] Briefly stated, in most places that 18 CFR 4.38 and 16.8 refer to consultation with resource agencies and Indian tribes, the reference has been changed to resource agencies, Indian tribes and members of the public.

consultation and to do so according to mutually agreeable rules.[260]

2. Mandatory, Binding Study Dispute Resolution

203. As discussed above, lack of effective study dispute resolution has been identified as one of the principal reasons for license applications that are incomplete or require significant additional information. The most commonly identified reasons for failing to use the existing study dispute resolution process are that it is not required to be used and that the result is advisory only.

204. We therefore propose to require consulted entities in the traditional process who oppose a potential applicant's information-gathering and study proposals to file a request for dispute resolution during pre-filing consultation. Consulted entities that do not request dispute resolution would thereafter be precluded from contesting the potential applicant's study plan or results with respect to the issue in question. We also propose to make the outcome of dispute resolution binding on all participants. In other words, the Director's order resolving the dispute will, if information or a study is determined to be necessary, direct the potential applicant to gather the information or conduct the study. Consulted entities would not be permitted to revisit the dispute after the application is filed.

205. Dispute resolution requests would occur during first stage consultation following the applicant's response to study requests by agencies, Indian tribes, or the public. Any additional study requests during the second stage of consultation would be subject to the same dispute resolution requirements.[261]

206. Consistent with our proposals to provide for full public participation in pre-filing consultation, require all potential license applicants to prepare the Pre-Application Document, and make study dispute resolution mandatory and binding, we also propose to eliminate from the traditional process for license applications the provision for participants to file requests for additional scientific studies not later than 60 days after the application is filed, and for the license applicant to respond. Resource agencies, tribes, and the public will have had two opportunities to request studies during pre-filing consultation and study disputes should be resolved, so there should be no need for an additional post-application opportunity to do so.[262]

207. The ALP process includes a provision for dispute resolution which is similar to the existing procedures for the traditional process and which, like those procedures, is advisory.[263] We propose to leave the existing ALP dispute resolution procedures in place, because mandatory, binding dispute resolution appears to be incompatible with the collaborative nature of the ALP. We request however comments on whether there may be circumstances under which binding study dispute resolution could be conducted in a manner that safeguards the collaborative process.

3. Recommendations Not Adopted

a. Waiver of Pre-Filing Consultation

208. Some industry commenters favor special provisions for non-controversial projects, which may include many small projects.[264] They state that small projects probably have few impacts that warrant serious study,[265] and that the cost of licensing is already disproportionately high for small projects.[266] PREPA recommends that projects be categorized by size and that small projects be the subject of a separate fast track process with short time frames and one year of studies, if any are needed.

209. In this connection, NHA and EEI recommend that applicants be permitted to request waiver of all or part of the pre-filing consultation requirements. Under this proposal, an applicant would, prior to the NOI deadline, distribute an information package to resource agencies, tribes, and other interested entities. This would be followed by a public meeting at which the Commission staff would explain the process options, and the Commission staff and applicant would seek input on an appropriate process. Following the meeting, and presumably before the NOI deadline, the applicant would choose a post-application NEPA process for the project. This would be accompanied by a request for waiver of all or part of the pre-filing consultation requirements.[267] The waiver request would be subject to public notice and comment. The applicant would still be required to meet the applicable filing requirements. Further public participation would be deferred until after the application is filed, as part of the Commission's NEPA process.[268]

210. NYSDEC and New York Rivers oppose any special provisions for small projects or those an applicant may regard as non-controversial. They state that project size is no determinant of environmental impacts or the scope of issues.[269] NYSDEC suggests that a single, flexible licensing process can accommodate small projects with few issues, but that the determination of issues and information needs can only be developed through NEPA scoping.

211. We are not inclined to adopt this aspect of NHA's proposal. For those applicants who use the traditional process, existing § 4.38(e)(1) already excuses applicants from complying with the pre-filing consultation requirements to the extent that a resource agency or Indian tribe is willing to waive consultation in writing. If a proposed project indeed engenders little controversy, then such waivers, in whole or part, may be obtainable in any event, or the burden of pre-filing information-gathering and studies should be modest. We also think it would be asking too much of stakeholders to comment on a waiver request following as little discussion as a single public meeting based on an information package that will necessarily be very slim with respect to project operations under a future new license. Finally, NHA's proposed criteria are not appropriate. Any information used in a NEPA analysis more than several years old is likely to be outdated with respect to current environmental conditions, and the document is likely to lack much information that is now routinely required. Nonetheless, the Commission recognizes the important place in the nation's energy infrastructure of small hydropower projects and is concerned about the potential imposition of unnecessary relicensing costs on these projects. We therefore request comments on other approaches to streamlining the licensing process for small projects without compromising the interests of other stakeholders.

[260] *See* 18 CFR 4.38(i).

[261] *See* proposed changes to 18 CFR 4.38 (b)(5), (c)(1), and (c)(2); and 16.38 (b)(5), (c)(1), and (c)(2).

[262] *See* proposed changes to 18 CFR 4.32(b)(7).

[263] 18 CFR 4.34(i)(6)(vii). Any party may request dispute resolution, but only after making reasonable efforts to resolve the matter informally.

[264] NHA, EEI, Spaulding.

[265] PREPA.

[266] Spaulding.

[267] NHA suggests that appropriate criteria for granting such waivers would include where: (1) The project has previously undergone NEPA review, as far back as 1969, which predates the Clean Water Act; (2) no new ground-disturbing facilities would be constructed; or (3) the project operation would be the same as under the existing license.

[268] NHA, EEI.

[269] NYSDEC, New York Rivers.

b. Applicant-Prepared NEPA Documents

212. Some licensees state that the licensing process would be less redundant and more timely if the Commission would permit applicants to include a draft EA or EIS with their application even if they use the traditional process.[270] That would clearly be inappropriate under the existing traditional process, because of the limited opportunity for public participation and the all-too-common continuation at the license application stage of study disputes. Such documents would in many cases be less useful to the Commission in fulfilling its NEPA responsibilities than the existing Exhibit E. Increasing public participation and adding binding dispute resolution to the traditional process should alleviate this problem, but we are not certain to what extent. The Commission requests comments on whether the Commission should modify its regulations in this regard.

c. Process Steps in the ALP

213. Some commenters state that the ALP is difficult to work with because the regulations do not clearly define process steps and the roles of the participants. They suggest that this gives applicants too much control over ALP processes, and that the ALP rules should be clarified in this regard.[271] We do not propose to impose any additional process steps to the ALP. The existing regulations provide the participants great flexibility to devise processes amenable to all participants, within certain general parameters, including a communications protocol, distribution of an initial information package, meetings open to the public, cooperative NEPA scoping and study plan development, and preliminary NEPA documents. The participants also set their own schedule, subject to the few limits established by the FPA and our implementing regulations (*i.e.*, final date for NOI and filing of new license application). The Commission staff, including its DRS, is also available upon request to assist the participants' efforts to resolve issues. We think this consensus-based, flexible approach is in part responsible for making the ALP a success story. Commenters more comfortable with a pre-determined process should find the integrated process more appealing.

214. PFMC states that participation in ALPs is difficult for some entities because it tends to be labor-intensive and they lack the resources to make the necessary commitment of time. It recommends that the Commission deny applicant requests to use the ALP if stakeholders indicate that they lack the needed resources. The Commission carefully considers each request to use the ALP and will, in appropriate cases, deny requests to use it where there is an absence of sufficient support from stakeholders.[272]

G. Ancillary Matters

1. Intervention by Federal and State Agencies

215. Federal agencies have requested that the Commission permit them to file a notice of intervention rather than a motion to intervene in all hydroelectric proceedings, grant them automatic intervenor status in all hydroelectric proceedings, or treat a grant of intervention in a licensing proceeding for any project as a grant of intervention in all subsequent proceedings involving that project. They contend that their mandatory conditioning and fishway prescription authority under FPA sections 4(e) and 18, respectively, responsibilities with respect to providing fish and wildlife recommendations pursuant to FPA section 10(j), and roles and responsibilities under other statutes that directly implicate the licensing process, such as the ESA and NHPA, ensure that they have a basis for intervening in any licensing proceeding.

216. The Commission agrees that the roles and responsibilities of these Federal agencies under the FPA and other applicable law ensure that their timely motions to intervene will be granted. The same consideration applies to the intervention of these Federal agencies in pipeline certificate proceedings under the Natural Gas Act. We therefore propose to permit these agencies to intervene by timely filing a notice of intervention in any proceeding, as is currently permitted for intervention by the Secretary of Energy and State Commissions pursuant to 18 CFR 385.214 (a) and (b). The Federal agencies that would be permitted to intervene by notice are the U.S. Departments of the Interior, Commerce, and Agriculture, and the Advisory Council on Historic Preservation.[273] We also propose to permit notice by intervention by State fish and wildlife and State water quality certification agencies, in light of their responsibilities under FPA section 10(j) and section 401 of the Clean Water Act, respectively.

217. It is not appropriate to grant automatic intervenor status in all proceedings, or to treat an intervention in any proceeding as an intervention in any other proceeding. The filing of a notice of intervention is at worst a very minor inconvenience. More important, the Commission solicits interventions at the beginning of proceedings in order to ensure that the concerns of all interested entities are timely considered, and known to all other interested entities, in the context of the procedures specific to that proceeding. No interested entity should have the option of remaining silent until the proceeding is well advanced unless it can show, in a late motion to intervene, good cause why it has not previously intervened.

2. Information Technology

218. GLIFWC states that pre-filing consultation and application development can involve many large documents that are not necessarily easily or cheaply obtained or readily searched, and that some tribes and other parties have limited areas of interest. They recommend that applicants be required to put as much information as possible on a website, so that participants can download documents of interest and use document searching capabilities to more easily find information relevant to their area of interest. Long View recommends that the Commission explicitly authorize license applicants to make the data now required to be made available to the public in public libraries or other places available on line instead.

219. The use of websites to disseminate information in licensing proceedings has grown dramatically in the past several years, particularly where applicants are using the ALP. The manner in which the internet is used to disseminate information and documents varies substantially from case to case. Uses range from posting little more than schedules of events, to posting of all documents generated during the licensing process or that existing licensees are required to make public by § 16.7 of our rules, to interactive stakeholder participation. The advantages of using the internet include adding transparency to the process,

[270] DM&GLH, Domtar, APT. Applicants who use the ALP are authorized to include a draft NEPA document with their application.

[271] CRITFC, NYRU, AMC, KCCNY, HRC.

[272] For example, the Commission declined to approve one licensee's request to use the ALP where it did not appear that there was sufficient support for the process from critical participants. In that case, the Commission is providing limited support by assigning separate technical and legal staff to assist stakeholders, but who are not active participants in prefiling consultation.

[273] An eligible Federal agency that does not timely intervene would be required to comply with the rules for motions to intervene applicable to any person under 18 CFR 385.214(a)(3), including the content requirements of 18 CFR 385.214(b).

document retrieval, and helping participants stay up to speed. If, for instance, a stakeholder in an ALP misses a meeting, it may be able to download or read meeting minutes.

220. We are not convinced that it is necessary or appropriate to require that all information required by our regulations to be made public before or during a licensing proceeding be made available on the internet or by CD ROM.[274] This may make sense for licensing proceedings in connection with large projects, or smaller projects operated by licensees with substantial resources.[275] There are however many small projects operated by small enterprises for which the cost of establishing and maintaining a Web site may be prohibitive.[276] There may also be concerns about site security and accidental dissemination of information prejudicial to national security.

221. Finally, we note that the Commission has granted waiver for an existing licensee to use a Web site in lieu of the requirement of § 16.7(d) to maintain a public ''licensing library,'' in circumstances where the licensee agreed to mail documents to persons lacking access to the internet.[277]

3. Project Boundaries and Maps

222. The Commission believes the existing regulations regarding the filing of maps to accompany applications for preliminary permits, exemptions, and licenses, which were most recently updated in 1988, have become outdated as the result of technological innovations since that time. Specifically, the Commission has been converting project boundary maps into georeferenced electronic maps to better enable it to evaluate and describe hydropower applications. To facilitate this effort, the Commission proposes to require applicants for licenses, exemptions, and amendments thereto, to file project boundary maps in a georeferenced electronic format compatible with the Commission's geographic information system.

223. Also, the Commission's current regulations do not require minor projects (projects with an installed capacity of 1.5 MW or less) occupying non-Federal lands to have a project boundary, because the project boundary for such projects was historically considered to be the reservoir shoreline.[278] Consistent with the effort described above, the Commission proposes to require all license and exemption applicants, regardless of the license or exemption type, to provide a project boundary with each application. For minor projects, a project boundary line would assist in establishing the project lands. To have consistency among all types of licenses and exemptions, we propose to modify the convention for naming exhibit drawings by requiring for all licenses and exemptions that Exhibit F contain design drawings of the principal project works, including fishways and fish screening facilities, and Exhibit G identify the project boundaries.[279] The Commission requests comments on this proposal.

4. Miscellaneous Filing Requirements

224. The Commission also proposes minor additions to the application filing requirements of §§ 4.41, 4.51, and 4.61. These are: monthly flow duration curves;[280] minimum and maximum hydraulic capacities for the powerplant;[281] estimated capital and operating and maintenance (O&M) expenses for each proposed environmental mitigation or enhancement measure;[282] estimates of the costs to develop the license application;[283] on-peak and off-peak values of project power, and the basis for the value determinations;[284] estimated annual increase or decrease in generation at existing projects;[285] remaining undepreciated net investment or book value of project;[286] annual O&M expenses for environmental measures;[287] a detailed, single-line electrical diagram;[288] and a statement of measures taken or planned to ensure safe management, operation, and maintenance of the project.[289]

225. These are items of information not specifically required to be included by the current regulations, but which the Commission staff requests as additional information in nearly every license proceeding in order to complete its NEPA and comprehensive development analyses. Obtaining this information with the application instead of via an additional information request will enable the staff to move forward more expeditiously to process license applications.

H. Transition Provisions

226. Several licensee commenters request that any new rule contain appropriate transition provisions so that ongoing proceedings are not disrupted.[290] The Commission proposes that the integrated licensing process rules and modifications to the traditional process and ALP apply to license applications for which the deadline for filing a notification of intent is three months or later after issuance of the final rule. If the deadline for existing licensees to file a notification of intent to seek a new license falls before that date, the rules as they exist prior to that date will apply to those licensees. The new rule will also not apply to potential original license applicants who have commenced first stage consultation prior to three months following the issuance date of the final rule. This will ensure that no ongoing proceedings are interrupted and would afford a window during which existing licensees facing a deadline for filing of their NOI can complete their Pre-Application Document and determine whether to file a request to use the traditional process or ALP.[291]

227. NHA recommends that applicants currently engaged in prefiling consultation under the traditional process or ALP be permitted

[274] *See, e.g.*, with respect to pre-filing consultation, 18 CFR 4.32(b)(3)–(5); 4.38(b)–(d) and (g); 16.7; and 16.8(b)(c), (d), and (i).

[275] A paper company might be one example, or a licensee that operates several small projects.

[276] While there are free web hosting sites on the internet, they may not be available to commercial entities and, if so, are not likely to offer terms of service that would accommodate the amount of space required to host the volume of data required by the Commission's licensing regulations. An informal canvassing of free hosting services indicates that most limit space to 5 megabytes (MB) or less. A typical license application exceeds 20 MB. Free web hosting sites may also have technical specifications for content that are incompatible with the kind of complex data accompanying license applications.

[277] A waiver was granted to Alabama Power Company with respect to the relicensing of the Coosa-Warrior Project Nos. 82, 618, 2146, and 2165.

[278] *See* Application for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less, 46 FR 55,944 (Nov. 13, 1981), FERC Stats. & Regs. Preambles 1977–1981 ¶ 30,309 at p. 31,372 (Nov. 6, 1981) (Order No. 185).

[279] *See* proposed modifications to 18 CFR 4.32(b)(2), 4.39 (a) and (b); 4.41(h), first paragraph, (h)(2), (h)(3), and (h)(4)(ii); 4.51 (g) and (h); 4.61 (e) and (f); 4.81(b); 4.92(a)(2), (c), (d), and (f); and 4.107 (d) and (f).

[280] *See* proposed modifications to 18 CFR 4.41(c)(2)(i), 4.51(c)(2)(i), and 4.61(c)(1)(vii).

[281] Proposed modifications to 18 CFR 4.41(c)(4)(iii); 4.51(c)(2)(iii), and 4.61(c)(1)(vii).

[282] Proposed new 18 CFR 4.41(e)(4)(v); 4.51(e)(7), and 4.61(c)(1)(x).

[283] Proposed new 18 CFR 4.41(e)(9); 4.51(e)(7); and 4.61(c)(3).

[284] Proposed new 18 CFR 4.41(e)(10); 4.51(e)(8); and 4.61(c)(4).

[285] Proposed new 18 CFR 4.51(e)(9) and 4.61(c)(5).

[286] Proposed new 18 CFR 4.61(c)(6).

[287] Proposed new 18 CFR 4.41(e)(4)(v); 4.51(e)(4)(v); and 4.61(c)(1)(x).

[288] Proposed new 18 CFR 4.61(c)(8).

[289] Proposed new 18 CFR 4.61(c)(9).

[290] EEI, PG&E, SCE, Idaho Power, NHA.

[291] We are also taking this opportunity to remove numerous obsolete transition provisions included in the part 16 relicensing rules promulgated pursuant to the Electric Consumers Protection Act. Specifically, we propose to remove 18 CFR 16.10(d) and (f); 16.11(a)(2); 16.19 (b)(3) and (b)(4); 16.19(c)(2); and 16.20 (c)(2), and (c)(3).

to decide whether to incorporate into the ongoing process any improvements resulting from this proceeding. Other licensee commenters similarly suggest that any new dispute resolution process be made available for use in any ongoing license proceeding.[292] CTUIR opposes modification of any ongoing licensing processes unless all participants agree to the specific modification.

228. We do not propose to make the modifications to the traditional process available for ongoing processes, because it would prejudice the interests of stakeholders with respect to pre-filing consultations ongoing when the rule is issued. As discussed above, for instance, the public is wholly excluded from first-stage consultation, and has very limited rights during second-stage consultation. NGOs that have had little or no opportunity to participate in a pre-filing consultation that is relatively advanced at the time the rules go into effect should not be bound by the dispute resolution provisions, which assume that they were full participants in consultation from the beginning. Likewise, an applicant that has conducted pre-filing consultation in good faith under the existing rules should not be faced during the later stages with the addition of NGOs making new study requests and filing 11th-hour dispute resolution requests because they were not consulted during first stage consultation, or because the opportunity to file a second stage dispute resolution request has passed. The more pre-filing consultation time has elapsed under the existing processes, the more prejudicial requests to import dispute resolution or other integrated process elements into the existing process become. If, however, all interested entities (including interested members of the public) are agreed that it would be advantageous to make an exception to this general rule, the Commission will entertain requests for exceptions.[293]

229. Finally, the project maps and boundaries and miscellaneous filing requirements would take effect three months after the issuance date of the final rule, in order to give license and exemption applicants time to comply.

IV. Environmental Analysis

230. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have significant adverse effect on the human environment.[294] The Commission has categorically excluded certain action from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended.[295] This proposed rule, if finalized, is procedural in nature and therefore falls under this exception; consequently, no environmental consideration would be necessary.

V. Regulatory Flexibility Act

231. The Regulatory Flexibility Act of 1980 (RFA)[296] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[297] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed licensing regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. We justify our certification on the fact that the efficiency and timeliness of the proposed integrated licensing process (early Commission assistance, early issue identification, integrated NEPA scoping with application development, and better coordination among federal and state agencies) would benefit small entities by minimizing the redundancy and waste caused by the often duplicative information needs of the Commission and the various federal and state agencies associated with the hydroelectric licensing process.

VI. Information Collection Statement

232. The following collections of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under sectio 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission identifies the information provided for under parts 4, 5, and 16 and FERC–500 ''Application for License/Relicense for Water Projects greater than 5 MW Capacity,'' and FERC–505, ''Application for License for Water Projects less than 5 MW Capacity.'' Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques.

Estimated Annual Burden:

TABLE 1.—TRADITIONAL LICENSING PROCESS

Data collection	Number of respondents [1]	Number of responses	Hours per response	Total annual hrs
FERC–500	26	1	46,000	1,196,000
FERC–505	15	1	10,000	150,000

[1] Estimated number of licenses subject to renewal through 2009.

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 1,356,000 hours.

TABLE 2.—PROPOSED INTEGRATED LICENSING PROCESS

Data collection	Number of respondents [1]	Number of responses	Hours per response [2]	Total annual hrs
FERC–500	26	1	32,200	837,200

[292] Van Ness, Duke.

[293] *See* proposed new 18 CFR 4.38(e)(4) and 16.8(e)(4).

[294] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (December 10, 1987).

[295] 18 CFR 380.4(a)(2)(ii).

[296] 5 U.S.C. 601–612 (1994).

[297] Section 601(c) of the RFA defines a ''small entity'' as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A ''small business'' is defined by reference to Section 3 of the Small Business Act as an enterprise which is ''independently owned and operated and which is not dominant in its field of operation'' 15 U.S.C. 632(a).

TABLE 2.—PROPOSED INTEGRATED LICENSING PROCESS—Continued

Data collection	Number of respondents [1]	Number of responses	Hours per response [2]	Total annual hrs
FERC–505	15	1	7,000	105,000

[1] Estimated number of licenses subject to renewal through FY 2009.
[2] Based on a 30% reduction through concomitant processes.

Total Annual Hours for Collections: (Reporting + Recordkeeping, (if appropriate)) = 942,200 hours

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

ANNUALIZED COSTS

Annualized Costs (Capital & Startup Costs)	
(1) Using Traditional Licensing Process:	
(a) Projects less than 5 MW (average)	$500,000.00
(b) Projects greater than 5 MW (average)	$2,300,000.00
(2) Using Proposed Integrated Licensing Process:	
(a) Projects less than 5MW average	$350,000.00
(b) Projects greater than 5 MW	$1,610,000.00
Total Annualized Costs:	
(1) Traditional Licensing Process	$67,300,000 ($59.8 mil. + $7.5 mil.)
(2) Proposed Integrated Licensing Process	$47,110,000 ($41.8 mil. + $5.25 mil.)

The Office of Management and Budget's (OMB) regulations [298] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–500 ''Application for License/Relicense for Water Projects greater than 5 MW Capacity,'' and FERC–505, ''Application for License for Water Projects less than 5 MW Capacity.''

Action: Proposed Collections.

OMB Control No: 1902–0058 (FERC 500) and 1902–0115 (FERC 505).

Respondents: Business or other for profit, or non-profit.

Frequency of Responses: On occasion.

Necessity of the Information: The proposed rule would revise the Commission's regulations regarding applications for licenses to construct, operate, and maintain hydroelectric projects. Specifically, proposed revisions would establish a new process for the development and processing of license applications that combines during the pre-filing consultation phase activities that are currently conducted during pre-filing consultation and after the license application is filed. The information proposed to be collected is needed to evaluate the license application pursuant to the comprehensive development standard of FPA section 10(a)(1), to consider in the comprehensive development analysis certain factors with respect to new licenses set forth in FPA section 15, and to comply with NEPA, ESA, and NHPA. Most of the information is already being collected under the existing regulations, and the new regulations would for the most part affect only the timing of the collection and the form in which it is presented. Internal Review: The Commission has reviewed the requirements pertaining to evaluation of hydroelectric license applications and has determined that the proposed revisions are necessary because the hydroelectric licensing process is unnecessarily long and costly.

These requirements conform to the Commission's plan for efficient information collection, communication, and management within the hydroelectric power industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *mike.miller@ferc.gov*]

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7318, fax: (202) 395–7285.

[298] 5 CFR 1320.11.

VII. Public Comment Procedures

233. The Commission invites interested persons to submit comments, data, views and other information concerning the matters set out in this proposed rule. To facilitate the Commission's views of the comments, the Commission requests commenters to provide an executive summary of their recommendations. To the greatest degree possible, commenters should use the topic headings that the proposed rule uses and arrange their comments in the order of topics presented in this proposed rule, and cite the specific referenced paragraph numbers. Commenters should identify separately any additional issues they may wish to address. Comments must refer to Docket No. RM02–16–000, and may be filed on paper or electronically via the Internet. The Commission must receive all such comments no later than 60 days after the issuance of this notice of proposed rulemaking. Those filing electronically do not need to make a paper filing. Reply comments will not be entertained.

234. Those making paper filings should submit the original and 14 copies of their comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

235. The Commission strongly encourages electronic filings.

Commenters filing their comments via the Internet must prepare their comments in WordPerfect, MS Word, Portable Document Format, Real Text Format, or ASCII format as listed on the Commission's Web site at *http://www.ferc.gov* , under the e-Filing link. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by E-Mail to *efiling@ferc.gov.* Do not submit comments to the E-Mail address.

236. The Commission will place all comments in the public files and they will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through the Commission's Homepage using the FERRIS link.

VIII. Document Availability

237. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov)* and in the Commission's Public Reference Room during regular business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

238. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this docket, excluding the last three digits, in the docket number field.

239. User assistance is available for FERRIS and the Commission's Web site during regular business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

List of Subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and record keeping requirements.

18 CFR Part 5

Administrative practice and procedure, Electric power, Reporting and record keeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and record keeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Report and record keeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 4, 16, and 385, and add part 5 to Chapter I, Title 18, Code of Federal Regulations as follows:

Regulatory Text

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Amend § 4.30 by revising paragraph (a) to read as follows:

§ 4.30 Applicability and definitions.

(a)(1) This subpart applies to applications for preliminary permit, license, or exemption from licensing.

(2) Any potential applicant for an original license for which prefiling consultation begins on or after [insert date three months following issuance date of final rule] and which wishes to develop and file its application pursuant to this part, must seek Commission authorization to do so pursuant to the provisions of part 5 of this chapter.

* * * * *

3. Amend § 4.32 as follows.

a. Throughout the section, remove the phrase ''Office of Hydropower Licensing'' and add in its place the phrase ''Office of Energy Projects''.

b. The second sentence of paragraph (b)(1) is revised.

c. Paragraph (b)(2) is revised.

d. In paragraph (b)(7), add the phrase ''Except as to a license or exemption application,'' at the beginning of the first sentence.

e. Paragraph (b)(10) is added.

f. Paragraph (k) is added.

The revised and added text reads as follows.

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * *

(b) * * *

(1) * * * The applicant or petitioner must serve one copy of the application or petition on the Director of the Commission's Regional Office for the appropriate region and on each resource agency, Indian tribe, or member of the public consulted pursuant to § 4.38 or § 16.8 of this chapter or part 5 of this chapter * * *.

(2) Each applicant for exemption must submit to the Commission's Secretary for filing an original and eight copies of the application. An applicant must serve one copy of the application on each resource agency consulted pursuant to § 4.38. For each application filed following [insert date three months following issuance date of final rule], maps and drawings must conform to the requirements of § 4.39. The originals (microfilm) of maps and drawing are not to be filed initially, but will be requested pursuant to paragraph (d) of this section.

* * * * *

(10) *Transition provisions.* (i) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application required by § 5.3 of this chapter, is [insert date three months following issuance date of final rule] or later.

(ii) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule], and potential applications for original license for which the potential applicant commenced first stage pre-filing consultation pursuant to § 4.38(b) prior to [insert date three months following issuance date of final rule], are subject to the Commission's regulations in § 4.32 as promulgated prior to [insert date three months following issuance date of final rule].

(iii) This section shall apply to exemption applications filed on or after [insert date three months following issuance date of final rule]. For exemption applications filed prior to [insert date three months following issuance date of final rule], this section

shall apply in the form in which it was promulgated prior to that date.

* * * * *

(k) *Transition provisions.* (1) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license , or for filing a notification of intent to file an original license application required by § 5.3 of this chpater, is [insert date three months following issuance date of final rule] or later.

(2) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule], and potential applications for original license for which the potential applicant commenced first stage pre-filing consultation pursuant to § 4.38(b) prior to [insert date three months following issuance date of final rule], are subject to the Commission's regulations in § 4.32 as promulgated prior to [insert date three months following issuance date of final rule].

(3) This section shall apply to exemption applications filed on or after [insert date three months following issuance date of final rule]. For exemption applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

4. Amend § 4.34 as follows:

a. In paragraph (b)(1), add at the beginning of the third sentence which begins ''If ongoing agency proceedings * * *'' the phrase ''In the case of an application prepared other than pursuant to part 5 of this chapter,''.

b. Paragraph (b)(5) is added.

c. Paragraph (e) is revised.

d. Paragraph (i)(5) is removed.

e. Paragraph (i)(9) is removed.

f. Paragraph (j) is added.

The revised and added text reads as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures

* * * * *

(b) * * *

(5)(i) With regard to certification requirements for a license applicant under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), an applicant shall file within 60 days from the date of issuance of the notice of ready for environmental analysis:

(A) A copy of the water quality certification;

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(C) Evidence of waiver of water quality certification as described in paragraph (f)(5)(ii) of this section.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Notwithstanding any other provision in Title 18, Chapter I, subchpater B, part 4, any application to amend an existing license, and any application to amend a pending application for a license, requires a new request for water quality certification pursuant to paragraph (b)(5)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

* * * * *

(e) Consultation on recommended fish and wildlife conditions; section 10(j) process.

(1) In connection with its environmental review of an application for license, the Commission will analyze all terms and conditions timely recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the proposed project. Submission of such recommendations marks the beginning of the process under section 10(j) of the Federal Power Act.

(2) The Commission may seek clarification of any recommendation from the appropriate fish and wildlife agency. If the Commission's request for clarification is communicated in writing, copies of the request will be sent by the Commission to all parties, affected resource agencies, and Indian tribes, which may file a response to the request for clarification within the time period specified by the Commission.

(3) If the Commission believes any fish and wildlife recommendation may be inconsistent with the Federal Power Act or other applicable law, the Commission will make a preliminary determination of inconsistency in the draft environmental document or, if none, the environmental analysis. The preliminary determination, for those recommendations believed to be inconsistent, shall include:

(i) An explanation why the Commission believes the recommendation is inconsistent with the Federal Power Act or other applicable law, including any supporting analysis and conclusions, and

(ii) An explanation of how the measures recommended in the environmental document would equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project.

(4) Any party, affected resource agency, or Indian tribe may file comments in response to the preliminary determination of inconsistency within the time frame allotted for comments on the draft environmental document or, if none, the time frame for comments on the environmental analysis. In this filing, the fish and wildlife agency concerned may also request a meeting, telephone or video conference or other additional procedure to attempt to resolve any preliminary determination of inconsistency.

(5) The Commission shall attempt, with the agencies, to reach a mutually acceptable resolution of any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency. If the Commission decides, or an affected resource agency requests, the Commission will conduct a meeting, telephone, or video conference, or other procedures to address issues raised by its preliminary determination of inconsistency and comments thereon. The Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. Any meeting, conference, or additional procedure to address these issues will be scheduled to take place within 90 days of the date the Commission issues a preliminary determination of inconsistency. The Commission will prepare a written summary of any meeting held under this subsection to discuss 10(j) issues, including any proposed resolutions and supporting analysis, and a copy of the summary will be sent to all parties, affected resource agencies, and Indian tribes.

(6) The section 10(j) process ends when the Commission issues an order

granting or denying the license application in question.

* * * * *

(j) *Transition provisions.* (1) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application required by § 5.3 of this chpater, is [insert date three months following issuance date of final rule] or later.

(2) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule], and potential applications for original license for which the potential applicant commenced first stage pre-filing consultation pursuant to § 4.38(b) prior to [insert date three months following issuance date of final rule], are subject to the Commission's regulations as promulgated prior to [insert date three months following issuance date of final rule].

(3) This section shall apply to exemption applications filed on or after [insert date three months following issuance date of final rule]. For exemption applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

5. Amend § 4.38 as follows:

a. Throughout the section, remove the phrase ''Office of Hydropower Licensing'' and add in its place the phrase ''Office of Energy Projects.''

b. In paragraph (a)(1), after the phrase 33 U.S.C. 1341(c)(1),'' remove the phrase ''and any Indian tribe that may be affected by the proposed project.'' and add in its place the following text: ''any Indian tribe that may be affected by the project, and members of the public. A potential license applicant must file a notification of intent to file a license application pursuant to § 5.3 and a Pre-Application Document pursuant to the provisions of § 5.4.''

c. Paragraph (a)(2) is revised.

d. Paragraph (b) is revised.

e. Paragraph (c) is revised.

f. In paragraph (d)(1), remove the phrase ''Indian tribes and other government offices'' and add in its place the phrase ''Indian tribes, other government offices, and consulted members of the public''.

g. In paragraph (d)(2), after the phrase ''Indian tribe'', add a comma and the following phrase ''members of the public''.

h. Paragraph (e) is revised.

i. Paragraph (f) is revised.

j. In paragraph (g)(1), remove the phrase ''(b)(2)'' and add in its place the phrase ''(b)(3)''.

k. Paragraph (g)(2) is revised.

k. Paragraph (h) is revised.

The revised text reads as follows:

§ 4.38 Consultation requirements.

(a) * * *

(2) The Director of the Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

(b) First Stage of Consultation. (1) A potential applicant for an original license must, at the time it files its notification of intent to seek a license pursuant to § 5.2 of this chapter, provide a copy of the Pre-Application Document to the entities specified in § 5.3 of this chapter.

(2) A potential applicant for an exemption must promptly contact each of the appropriate resource agencies, affected Indian tribes, and members of the public likely to be interested in the proceeding; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a description of any existing facilities, their operation, and any proposed changes), reasonable hydropower alternatives, and what studies the applicant should conduct. The potential applicant must provide to the resource agencies, Indian tribes and the Commission the following information:

(i) Detailed maps showing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project, with a description of any proposed diversion of a stream through a canal or penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected, the significant resources present, and the applicant's proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi)(A) A statement (with a copy to the Commission) of whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter;

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any;

(vii) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(viii) Any statement required by § 4.301(a).

(3) No earlier than 30 days, but no later than 60 days, from the date of the potential applicant's letter transmitting the Pre-Application Document, or information required by paragraph (b)(2) of this section, as applicable, to the agencies, Indian tribes and members of the public under paragraph (b)(1) of this section, the potential applicant must:

(i) Hold a joint meeting at a convenient place and time, including an opportunity for a site visit, with all pertinent agencies, Indian tribes, and members of the public to explain the applicant's proposal and its potential environmental impact, to review the information provided, and to discuss the data to be obtained and studies to be conducted by the potential applicant as part of the consultation process;

(ii) Consult with the resource agencies, Indian tribes and members of the public on the scheduling and agenda of the joint meeting; and

(iii) No later than 15 days in advance of the joint meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(4) The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must promptly provide copies of these recordings or transcripts to the Commission and, upon request, to any resource agency, Indian tribe, or member of the public.

(5) Not later than 60 days after the joint meeting held under paragraph

(b)(2) of this section (unless extended within this time period by a resource agency, Indian tribe, or members of the public for an additional 60 days by sending written notice to the applicant and the Director of the Office of Energy Projects within the first 60 day period, with an explanation of the basis for the extension), each interested resource agency, Indian tribe, and members of the public must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or the information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals and objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than any other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(2)(vii) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its resource goals and objectives that are affected by the proposed project.

(6) *Study dispute resolution.* (i) If a potential applicant and a resource agency, Indian tribe, or member of the public disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency, Indian tribe, or member of the public may refer the dispute in writing to the Director of the Office of Energy Projects (Director) for resolution.

(ii) At the same time as the request for dispute resolution is submitted to the Director, the entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party and any affected resource, Indian tribe, or member of the public, which may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(6)(i) or (b)(6)(ii) of this section must be filed with the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director pursuant to § 4.38(b)(6).

(iv) The Director will resolve the disputes by an order directing the potential applicant to gather such information or conduct such study or studies as, in the Director's view, is reasonable and necessary.

(v) If a resource agency, Indian tribe, or member of the public fails to refer a dispute regarding a request for a potential applicant to obtain information or conduct studies (other than a dispute regarding the information specified in paragraph (b)(1) or (b)(2) of this section), the Commission will not entertain the dispute following the filing of the license application.

(vi) If a potential applicant fails to obtain information or conduct a study as required by the Director pursuant to paragraph (b)(6)(iv) of this section, its application will be considered deficient.

(7) The first stage of consultation ends when all participating agencies, Indian tribes, and members of the public provide the written comments required under paragraph (b)(5) of this section or 60 days after the joint meeting held under paragraph (b)(3) of this section, whichever occurs first, unless a resource agency or Indian tribe timely notifies the applicant and the Director of Energy Projects of its need for more time to provide written comments under paragraph (b)(5) of this section, in which case the first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(5) of this section or 120 days after the joint meeting held under paragraph (b)(5) of this section, whichever occurs first.

(c) *Second stage of consultation.* (1) Unless determined to be unnecessary by the Director pursuant to paragraph (b)(6) of this section, a potential applicant must diligently conduct all reasonable studies and obtain all reasonable information requested by resource agencies, Indian tribes, and members of the public under paragraph (b) of this section to which the potential applicant has agreed. The applicant shall also obtain any data and conduct any studies required by the Commission pursuant to the dispute resolution procedures of paragraph (b)(6) of this section. These studies must be completed and the information obtained:

(i) Prior to filing the application, if the results:

(A) Would influence the financial (*e.g.,* instream flow study) or technical feasibility of a project (*e.g.,* study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, reasonable alternatives to the project, the impact of the project on important natural or cultural resources (*e.g.,* resource surveys), or suitable mitigation or enhancement measures, or to minimize impact on significant resources (*e.g.,* wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After filing the application but before issuance of a license or exemption, if the applicant otherwise complied with the provisions of paragraph (b)(1) or (b)(2) of this section, as applicable, and the study or information gathering would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the expiration of the applicant's preliminary permit or the application filing deadline set by the Commission;

(iii) After a new license or exemption is issued, if the studies can be conducted or the information obtained only after construction or operation of the proposed facilities, would determine the success of protection, mitigation, or enhancement measures (*e.g.,* post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(7) of this section, a resource agency, Indian tribe, or member of the public requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis and reasoning for its request, under paragraphs (b)(5)(i)–(vi) of this section, the potential applicant must promptly initiate the study or gather the information, or explain to the requesting entity why it believes the request is not reasonable or necessary. If the potential applicant declines to obtain the information or conduct the study, any resource agency, Indian tribe, or consulted member of the public may refer any such request to the Director of the Office of Energy Projects for dispute resolution under the procedures and subject to the other requirements set forth in paragraph (b)(6) of this section

(3)(i) The results of studies and information-gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32(e)(1) or (e)(2) merely because the study or information gathering is not complete before the application is filed.

(4) A potential applicant must provide each resource agency, Indian tribe, and consulted member of the public with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comments and recommendations made by any resource agency, Indian tribe, or consulted member of the public either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information-gathering either requested by that resource agency, and Indian tribe, or consulted member of the public in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertain to resources of interest to the resource agency, Indian tribe, or consulted member of the public and which were identified by the potential applicant pursuant to paragraph (b)(2)(vii) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measures; and

(iii) A written request for review and comment.

(5) A resource agency, and Indian tribe, or consulted member of the public will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) of this section information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4) of this section.

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency, Indian tribe, or consulted member of the public has a substantive disagreement a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold a joint meeting with the resource agency, Indian tribe, other agencies, and consulted members of the public with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the written comments of the disagreeing agency, Indian tribe, or consulted member of the public to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures;

(ii) Consult with the disagreeing agency, Indian tribe, other agencies with similar or related areas of interest, expertise, and responsibility, and consulted member of the public on the scheduling of the joint meeting; and

(iii) At least 15 days in advance of the meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(7) The potential applicant and any disagreeing resource agency, Indian tribe, or consulted member of the public may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency, Indian tribe, or consulted member of the public on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency, Indian tribe, and consulted non-governmental organization, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section and a resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in case where a resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements.

* * * * *

(e) *Waiver of compliance with consultation requirements.* (1) If a resource agency, Indian tribe, or consulted member of the public waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency or tribe.

(2) If a resource agency, Indian tribe, or consulted member of the public fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency, Indian tribe, or consulted member of the public to comply.

(3) The failure of a resource agency, Indian tribe, or consulted member of the public to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(4) Following [insert issuance date of final rule], a potential license applicant engaged in pre-filing consultation under this part may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

(f) *Application requirements documenting consultation and any disagreements with resource agencies.* An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) and paragraphs (g) and (h) of this section, and must include a summary of the consultation process and:

(1) Any resource agency's, Indian tribe's, or consulted member of the public letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreements with a resource agency, Indian tribe, or consulted member of the public on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement;

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency, Indian tribe, or

consulted non-governmental organization.

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency, Indian tribe, or consulted non-governmental organization, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation.

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan;

(7) A description of how the applicant's proposal addresses the significant resource issues raised at the joint meeting held pursuant to paragraph (b)(3) of this section; and

(8) A list containing the name and address of every Federal, state, and interstate resource agency, Indian tribe, or consulted member of the public with which the applicant consulted pursuant to paragraph (a)(1) of this section.

(g) * * *

(2)(i) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(1) or (b)(2) of this section, as applicable, from the date on which the notice required by paragraph (g)(1) of this section is first published until a final order is issued any the license application.

(ii) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(3) of this section at least two copies of the information specified in paragraph (b)(1) or (b)(2) of this section, as applicable.

(h) *Transition provisions.* (1) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application required by § 5.3 of this chapter, is [insert date three months following issuance date of final rule] or later.

(2) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule], and potential applications for original license for which the potential applicant commenced first stage pre-filing consultation pursuant to § 4.38(b) prior to [insert date three months following issuance date of final rule], are subject to the Commission's regulations in § 4.38 as promulgated prior to [insert date three months following issuance date of final rule].

* * * * *

6. Amend § 4.39 as follows:

a. Paragraph (a) is revised.

b. Paragraph (b), introductory language, is revised.

c. Paragraph (e) is added.

d. Paragraph (f) is added.

The revised and added text reads as follows:

§ 4.39 Specifications for maps and drawings.

* * * * *

(a) Each original map or drawing must consist of a print on silver or gelatin 35mm microfilm mounted on Type D (3¼<gr-thn-eq> by 7⅜ <gr-thn-eq> aperture cards. Two duplicates must be made on sheets of each original. Full-sized prints of maps and drawings must be on sheets no smaller than 24 by 36 inches and no larger than 28 by 40 inches. A space five inches high by seven inches wide must be provided in the lower right hand corner of each sheet. The upper half of this space must bear the title, numerical and graphical scale, and other pertinent information concerning the map or drawing. The lower half of the space must be left clear. Exhibit G drawings must be stamped by a Registered Land Surveyor. If the drawing size specified in this paragraph limits the scale of structural drawings (exhibit F drawings) described in paragraph (c) of this section, a smaller scale may be used for those drawings.

(b) Each map must have a scale in full-sized prints no smaller than one inch equals 0.5 miles for transmission lines, roads, and similar linear features and no smaller than one inch equals 1,000 feet for other project features, including the project boundary. Where maps at these scale do not show sufficient detail, large scale maps may be required. * * *

* * * * *

(e) The maps and drawings showing project location information and details of project structures must be filed in accordance with the Commission's instructions on submission of Critical Energy Infrastructure Information in §§ 388.112 and 388.113 of subchapter X of this chapter.

(f) *Transition provisions.* (1) This section shall apply to license or exemption applications filed following [insert date three months following issuance date of final rule].

(2) For license or exemption applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

* * * * *

7. Amend § 4.41 as follows:

a. In paragraph (c)(4)(i), remove the phrase ''a flow duration curve'' and add in its place the phrase ''monthly flow duration curves''.

b. In paragraph (c)(4)(iii), add the phrase ''minimum and maximum'' between the words ''estimated'' and ''hydraulic''.

c. In paragraph (e)(4)(iii), remove the word ''and''.

d. In paragraph (e)(4)(iv), add the word ''and'' after the word ''contingencies''.

e. In paragraph (e)(7), remove the word ''and'' after the word ''constructed;''.

f. Paragraph (e)(4)(v) is added.

g. In paragraph (e)(8), remove the period after ''section'' and add in its place a semi-colon.

h. Paragraphs (e)(9) and (e)(10) are added.

i. Paragraph (h), introductory text, is revised.

j. In paragraph (h)(2), second sentence, the word ''license'' is removed from the phrase ''the license application''.

k. Paragraph (h)(3)(iv) is added.

l. Paragraph (h)(4)(ii) is revised.

m. Paragraph (i) is added.

The revised and added text reads as follows.

§ 4.41 Contents of Application.

* * * * *

(e) * * *

(4) * * *

(v) The estimated capital cost and estimated annual operation and maintenance expense of each proposed environmental measure.

* * * * *

(9) An estimate of the cost to develop the license application;

(10) The on-peak and off-peak values of project power, and the basis for estimating the values, for projects which are proposed to operate in a mode other than run of river.

* * * * *

(h) *Exhibit G* is a map of the project that must conform to the specifications of § 4.39. In addition, each exhibit G boundary map must be submitted in a geo-referenced electronic format—such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format. The

electronic boundary map must be positionally accurate to + 40 feet, in order to comply with the National Map Accuracy Standards for maps at a 1:24,000 scale (the scale of USGS quadrangle maps). The electronic exhibit G data must include a text file describing the map projection used (*i.e.,* UTM, State Plane, Decimal Degrees, *etc.*), the map datum (*i.e.,* feet, meters, miles, *etc.*). Three copies of the electronic maps must be submitted on compact disk or DVD. If more than one sheet is used for the paper maps, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicate that portion of the project depicted on that sheet. Each sheet must contain a minimum of three know reference points. The latitude and longitude coordinates, or state plane coordinates, or each reference point must be shown. If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within 90 days following the completion of project construction, a final exhibit G showing the extent of such changes. The map must show:

* * * * *

(3) * * *

(iv) The project location must include the most current information pertaining to affected Federal lands as described under § 4.81(b)(5).

(4) * * *

(ii) Lands over which the applicant has acquired or plans to acquire rights to occupancy and use other than fee title, including rights acquired or to be acquired by easement or lease.

(i) *Transition provisions.* (1) This section shall apply to license applications filed following [insert date three months following issuance date of final rule].

(2) For license applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

8. Amend § 4.51 as follows:

a. In paragraph (c)(2)(i), after the phrase ''available flow;'' remove the word ''a'' and add in its place the word ''monthly''.

b. In paragraph (c)(2)(iii), before the word ''maximum'', add the phrase ''minimum and''.

c. Paragraph (e)(4) is revised.

d. Paragraphs (e)(7)–(9) are added..

e. Paragraph (g) is revised.

f. Paragraph (h) is revised.

g. Paragraph (i) is added.

The revised and added text reads as follows:

§ 4.51 Contents of application.

* * * * *

(e) * * *

(4) A statement of the estimated average annual cost of the total project as proposed specifying any projected changes in the costs (life-cycle costs) over the estimated financing or licensing period if the applicant takes such changes into account, including:

(i) Cost of capital (equity and debt);

(ii) Local, state, and Federal taxes;

(iii) Depreciation and amortization,

(iv) Operation and maintenance expenses, including interim replacements, insurance, administrative and general expenses, and contingencies; and

(v) The estimated capital cost and estimated annual operation and maintenance expense of each proposed environmental measure.

* * * * *

(7) An estimate to develop the cost of the license application;

(8) The on-peak and off-peal values of project power, and the basis for estimating the values, for projects which are proposed to operate in a mode other than run-of-river; and

(9) The estimated average annual increase or decrease in project generation, and the estimated average annual increase or decrease of the value of project power, due to a change in project operations (*i.e.,* minimum bypass flows; limits on reservoir fluctuations).

* * * * *

(g) Exhibit F. See § 4.41(g).

(h) Exhibit G. See § 4.41(h).

(i) *Transition provisions.* (1) This section shall apply to license applications filed following [insert date three months following issuance date of final rule].

(2) For license applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

* * * * *

9. Amend § 4.61 as follows:

a. In paragraph (c)(1)(vii), after the first appearance of the word ''estimated'' add the phrase ''minimum and maximum''. After the phrase ''1.5 megawatts,'' remove the word ''a'' and add in its place the word ''monthly''. Pluralize the word ''curve''.

b. Paragraph (c)(1)(x) is added.

c. Paragraphs (c) (3) through (9) are added.

d. Paragraph (e) is revised.

e. Paragraph (f) is revised.

f. Paragraph (g) is added.

The revised and added text reads as follows:

§ 4.61 Contents of Application

* * * * *

(c) * * *

(1) * * *

(x) The estimated capital costs and estimated annual operation and maintenance expense of each proposed environmental measure.

* * * * *

(3) An estimate of the cost to develop the license application; and

(4) The on-peak and off-peak values of project power, and the basis for estimating the values, for project which are proposed to operate in a mode other than run-of-river.

(5) The estimated average annual increase or decrease in project generation, and the estimated average annual increase or decrease of the value of project power due to a change in project operations (*i.e.,* minimum bypass flows, limiting reservoir fluctuations) for an application for a new license;

(6) The remaining undepreciated net investment, or book value of the project;

(7) The annual operation and maintenance expenses, including insurance, and administrative and general costs;

(8) A detailed single-line electrical diagram;

(9) A statement of measures taken or planned to ensure safe management, operation, and maintenance of the project.

* * * * *

(e) Exhibit F. See § 4.41(g).

(f) Exhibit G. See § 4.41(h).

(g) *Transition provisions.* (1) This section shall apply to license applications filed following [insert date three months following issuance date of final rule].

(2) For license applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

* * * * *

10. Amend § 4.81 as follows:

a. Paragraph (b)(5) is revised.

b. Paragraph (f) is added.

The revised and added text reads as follows:

§ 4.81 Contents of application.

* * * * *

(b) * * *

(5) All lands of the United States that are enclosed within the proposed project boundary described under paragraph (e)(3) of this section, identified and tabulated on a separate

sheet by legal subdivisions of a public land survey of the affected area, if available. If the project boundary includes lands of the United States, such lands must be identified on a completed land description form, provided by the Commission. The project location must identify any Federal reservation, Federal tracts, and townships of the public land surveys (or official protractions thereof if unsurveyed). A copy of the form must also be sent to the Bureau of Land Management state office where the project is located;

* * * * *

(f) *Transition provisions.* (1) This section shall apply to preliminary permit applications filed following [insert date three months following issuance date of final rule].

(2) For preliminary permit applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

* * * * *

11. Amend § 4.92 as follows:

a. Paragraph (a)(2) is revised.

b. In paragraph (c), introductory text, remove the phrase ''Exhibit B'' and add it its place the phrase ''Exhibit F''.

c. Paragraph (d) is revised.

d. Paragraph (f) is revised.

e. Paragraph (g) is added.

The revised and added text reads as follows:

§ 4.92 Contents of exemption application.

(a) * * *

(2) Exhibits A, E, F, and G.

* * * * *

(d) *Exhibit G.* Exhibit G is a map of the project and boundary and must conform to the specifications of § 4.41(h).

* * * * *

(f) *Exhibit F.* Exhibit F is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility and must conform to the specifications of § 4.41(g).

(g) *Transition provisions.* (1) This section shall apply to exemption applications filed following [insert date three months following issuance date of final rule].

(2) For exemption applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

* * * * *

12. Amend § 4.107 as follows:

a. Paragraph (d) is revised.

b. Paragraph (f) is revised.

c. Paragraph (g) is added.

The revised and added text reads as follows:

§ 4.107 Contents of application for exemption from licensing.

* * * * *

(d) *Exhibit G.* Exhibit G is a map of the project and boundary and must conform to the specifications of § 4.41(h).

* * * * *

(f) *Exhibit F.* Exhibit F is a set of drawings showing the structures and equipment of the small hydroelectric facility and must conform to the specifications of § 4.41(g).

(g) *Transition provisions.* (1) This section shall apply to exemption applications filed following [insert date three months following issuance date of final rule].

(2) For exemption applications filed prior to [insert date three months following issuance date of final rule], this section shall apply in the form in which it was promulgated prior to that date.

1. Add part 5 to read as follows:

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

Sec.

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

§ 5.1 Applicability, definitions, requirement to consult, process selection.

(a) *Applicability.* This part applies to the filing and processing of an application for an:

(1) Original license;

(2) New license for an existing project subject to sections 14 and 15 of the Federal Power Act; or

(3) Subsequent license.

(b) *Definitions.* The definitions in §§ 4.30(b) and 16.2 of this chapter apply to this part.

(c) *Who may file.* Any citizen, association of citizens, domestic corporation, municipality, or state may develop and file a license application under this part.

(d) *Requirement to consult.* (1) Before it files any application for an original, new, or subsequent license under this part, a potential applicant must consult with the relevant Federal, state, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands utilized or occupied by the project, the appropriate state fish and wildlife agencies, the appropriate state water resource management agencies, the certifying agency under Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1)), any Indian tribe that may be affected by the project, and members of the public. A potential license applicant must file a notification of intent to file a license application pursuant to §§ 5.2 and a Pre-Application Document pursuant to the provisions of §§ 5.3.

(2) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

(e) *Default process.* Each potential original, new, or subsequent license applicant must use the license application process provided for in this part unless the potential applicant applies for and receives authorization from the Commission under this part to use the licensing process provided for in:

(1) 18 CFR part 4, subparts D–H and, as applicable, part 16 of this chapter (*i.e.*, traditional process), pursuant to paragraph (c) of this section; or

(2) Section 4.34(i) Alternative procedures of this chapter

(f) *Request to use traditional licensing process or alternative procedures.* (1) A

potential license applicant may file with the Commission a request to use the traditional licensing process or alternative procedures pursuant to this paragraph.

(2) A potential applicant for an original, new, or subsequent license must file its request for approval to use the traditional licensing process or alternative procedures with its notification of intent pursuant to § 5.3.

(3) (i) An application for authorization to use the traditional process must include any existing written comments on the applicant's proposal and a response thereto.

(ii) A potential applicant requesting the use of § 4.34(i) *alternative procedures* of this part must:

(A) Demonstrate that a reasonable effort has been made to contact all resource agencies, Indian tribes, citizens' groups, and others affected by the applicant's proposal, and that a consensus exists that the use of alternative procedures is appropriate under the circumstances;

(B) Submit a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing consultation process, including the Commission staff, may communicate with each other regarding the merits of the applicant's proposal and proposals and recommendations of interested entities; and

(C) Serve a copy of the request on all affected resource agencies and Indian tribes and on all entities contacted by the applicant that have expressed an interest in the alternative pre-filing consultation process.

(4)(i) The applicant shall serve a copy of the request on all affected resource agencies, Indian tribes, and members of the public likely to be interested in the proceeding. The request shall state that comments on the request to use the traditional process or alternative procedures must be filed with the Commission within 15 days of the filing date of the request and, if there is no project number, that responses must reference the potential applicant's name and address.

(ii) The Applicant must also publish notice of the filing of its notification of intent, Pre-Application Document, and request to use the traditional process or alternative procedures no later than the filing date of the notification of intent in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must:

(A) Disclose the filing date of the notification of intent, Pre-Application Document, and request to use the traditional process or alternative procedures;

(B) Briefly summarize these documents and the basis for the request to use the traditional process or alternative procedures;

(C) Include the potential applicant's name and address, and telephone number, the type of facility proposed to be applied for, its proposed location, the places where the Pre-Application Document is available for inspection and reproduction;

(D) Include a statement that comments on the request to use the traditional process or alternative procedures are due to the Commission and the potential applicant no later than 15 days following the filing date of that document and, if there is no project number, that responses must reference the potential applicant's name and address; and

(E) State that respondents must submit an original and eight copies of their comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

(5) Requests to use the traditional process or alternative procedures shall be granted for good cause shown.

§ 5.2 Acceleration of a license expiration date.

(a) *Request for acceleration.* (1) A licensee may file with the Commission, in accordance with the formal filing requirements in subpart T of part 385 of this chapter, a written request for acceleration of the expiration date of its existing license, containing the statements and information specified in § 16.6(b) of this chapter and a detailed explanation of the basis for the acceleration request.

(2) If the Commission grants the request for acceleration pursuant to paragraph (c) of this section, the Commission will deem the request for acceleration to be a notice of intent under § 16.6 of this chapter and, unless the Commission directs otherwise, the licensee shall make available the Pre-Application Document provided for in § 5.4 no later than 90 days from the date that the Commission grants the request for acceleration.

(b) *Notice of request for acceleration.* (1) Upon receipt of a request for acceleration, the Commission will give notice of the licensee's request and provide a 45-day period for comments by interested persons by:

(i) Publishing notice in the **Federal Register**;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying appropriate Federal, state, and interstate resource agencies and Indian tribes, and non-governmental organizations likely to be interested by mail.

(2) The notice issued pursuant to paragraphs (b)(1) (i) and (ii) of this section and the written notice given pursuant to paragraph (b)(1)(iii) of this section will be considered as fulfilling the notice provisions of § 16.6(d) of this chapter should the Commission grant the acceleration request and will include an explanation of the basis for the licensee's acceleration request.

(c) *Commission order.* If the Commission determines it is in the public interest, the Commission will issue an order accelerating the expiration date of the license to not less than five years and 90 days from the date of the Commission order.

§ 5.3 Notification of intent.

(a) A potential applicant for an original license and, in the case of an existing licensee for the project, a potential applicant for new or subsequent license, must file a notification of its intent to do so in the manner provided for in paragraphs (b) and (c) of this section.

(b) In order to notify the Commission whether it intends to file an application for an original license or, in the case of an existing licensee, whether or not it intends to file an application for a new or subsequent license, a potential applicant for an original license or an existing licensee must file with the Commission an original and eight copies of a letter that contains the following information:

(1) The potential applicant or existing licensee's name and address.

(2) The project number, if any.

(3) The license expiration date, if any.

(4) An unequivocal statement of the potential applicant's intention to file an application for an original license, or, in the case of an existing licensee, to file or not to file an application for a new or subsequent license.

(5) The type of principal project works licensed, if any, such as dam and reservoir, powerhouse, or transmission lines.

(6) The location of the project by state, county, and stream, and, when appropriate, by city or nearby city.

(7) The installed plant capacity, if any.

(8) The names and mailing addresses of:

(i) Every county in which any part of the project is located, and in which any Federal facility that is used or to be used by the project is located;

(ii) Every city, town, Indian tribe, or similar political subdivision:

(A) In which any part of the project is or is to be located and any Federal facility that is or is to be used by the project is located, or

(B) That has a population of 5,000 or more people and is located within 15 miles of the existing or proposed project dam,

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project is or is proposed to be located and any Federal facility that is or is proposed to be used by the project is located, or

(B) That owns, operates, maintains, or uses any project facility or any Federal facility that is or is proposed to be used by the project; and

(iv) Every other political subdivision in the general area of the project or proposed project that there is reason to believe would be likely to be interested in, or affected by, the notification.

(c) Before it files any application for an original, new, or subsequent license, a potential license applicant proposing to file a license application pursuant to this part or to request to file a license application pursuant to part 4 and, as appropriate, part 16 (*i.e.*, the ''traditional process''), including an application pursuant to § 4.34(i) *alternative procedures* of this chapter must distribute to appropriate Federal, state, and interstate resource agencies, Indian tribes, and members of the public likely to be interested in the proceeding the notification of intent provided for in paragraph (a) of this section.

(d) An existing licensee must notify the Commission as required in paragraph (b) of this section at least five years, but not more than five and one-half years, before its existing license expires.

(e) Any entity that files a notification of intent to seek an original, new, or subsequent license application shall be referred to hereafter in this part as a license applicant.

(f) A license applicant may at the same time it files its notification of intent and distributes its Pre-Application Document, request to be designated as the Commission's non-Federal representative for purposes of consultation under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 50 CFR 600.920, or request to initiate consultation under section 106 of the National Historic Preservation Act and the implementing regulations at 36 CFR 800.2(c)(4).

(g) The provisions of subpart F of part 16 of this chapter apply to projects to which this part applies.

(h) The provisions of this part and parts 4 and 16 of this chapter shall be construed in a manner that best implements the purposes of each part and gives full effect to applicable provisions of the Federal Power Act.

§ 5.4 Pre-Application document.

(a) Along with its notification of intent (if applicable), before it files any application for an original, new, or subsequent license, a license applicant filing an application pursuant to this part or requesting to file an application pursuant to part 4 of this chapter and, as appropriate, part 16 of this chapter, (*e.g.*, the traditional process) including an application pursuant to § 4.34(i), *alternative procedures* of this chapter must, at the time it files its notification of intent to seek a license, file with the Commission and distribute to the appropriate Federal, state, and interstate resource agencies, Indian tribes, and members of the public likely to be interested in the proceeding, the Pre-Application Document provided for in paragraph (b) of this section.

(b) The agencies referred to in paragraph (a) of this section include, by resource area:

(1) *Geology and soils, water resources, fish and aquatic resources, wildlife and botanical resources, wetlands and riparian habitat, and rare, threatened, and endangered species:* Any state agency with responsibility for fish, wildlife, and botanical resources, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service (if the project may affect anadromous fish resources subject to that agency's jurisdiction), and any other state or Federal agency with managerial authority over any part of project lands.

(2) *Cultural resources:* The State Historic Preservation Officer, Tribal Historic Preservation Officer, National Park Service, and any other state or Federal agency with managerial authority over any part of project lands.

(3) *Recreation and land use, aesthetic resources:* Local, state, and regional recreation agencies and planning commission, local and state zoning agencies, the National Park Service, and any other state or Federal agency with managerial authority over any part of project lands.

(c) Pre-Application Document: (1) *Purpose.* This document is intended to compile and provide to the Commission, Federal and state agencies, Indian tribes, and members of the public engineering, economic, and environmental information available at the time the applicant files the notification of intent required by § 5.2. The Pre-Application Document also provides the basis for identifying issues and information needs, developing study requests, study plans, and the Commission's environmental scoping documents under the National Environmental Policy Act (NEPA). It is a precursor to Exhibit E of the draft and final license applications and the Commission's NEPA document.

(2)(i) *Form and Content.* The potential applicant must include in the Pre-Application Document:

(A) The exact name and business address, and telephone number of each person authorized to act as agent of the applicant.

(B) A record of contacts, if any, with Federal, state, and interstate resource agencies, Tribes, non-governmental organizations (NGOs) or other members of the public made in connection with preparing the Pre-Application Document.

(C) Detailed maps showing project boundaries, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of Federal and tribal lands, and all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities.

(D) A general description of the river basin in which the project is located, including:

(*1*) Land use and cover;

(*2*) Hazardous waste disposal sites;

(*3*) Federal or tribal lands;

(*4*) Dams and diversions, whether or not used for hydropower generation, within the basin;

(*5*) A list of relevant comprehensive or resource management plans applicable to both the basin and the project (Federal and state comprehensive plans are listed on the Commission's Web site at *http://www.ferc.gov*/hydro/docs/complan.pdf).

(E) If applicable, a description of all project facilities and associated components. The description must include:

(*1*) The physical composition, dimensions, and general configuration and engineering design of any dams, spillways, penstocks, canals, powerhouses, tailraces or other structures proposed to be included as part of the project;

(*2*) The normal maximum water surface area and normal maximum water surface elevation (mean sea level), gross storage capacity of any

impoundments to be included as part of the project;

(*3*) The number, type, and the hydraulic and installed (rated) capacity of any proposed turbines or generators to be included as part of the project;

(*4*) The number, length, voltage and interconnections of any primary transmission lines proposed to be included as part of the project;

(*5*) The description of any additional mechanical, electrical, and transmission equipment appurtenant to the project; and

(*6*) An estimate of the dependable capacity, average annual, and average monthly energy production in kilowatt-hours (or mechanical equivalent).

(F) If applicable, a description of:

(*1*) The current and proposed operation of the project;

(*2*) Any new facilities or components to be constructed at the project;

(*3*) The construction history of the project; and

(*4*) Any plans for future development or rehabilitation of the project.

(G)(*1*) The potential applicant should discuss, with respect to each of the resources as follows:

(*i*) The existing environment to the level of detail indicated in this paragraph;

(*ii*) Any existing data or studies regarding the resource;

(*iii*) Any known or potential adverse impacts and issues associated with the construction, operation or maintenance of the proposed project;

(*iv*) Any project features the potential applicant has already constructed and/or maintains, voluntarily, or pursuant to the requirements of Federal or state agency or tribe to avoid or minimize adverse effects on the resource;

(*v*) Any measures the potential applicant believes might reasonably be taken to avoid or minimize adverse effects on the resource. The potential license applicant should consider providing photographs or other visual aids, as appropriate, to supplement its written presentation of information.

(ii) *Geology and Soils.* A description of the existing geology, topography, and soils of the proposed project and surrounding area, to the extent known and available, including:

(A) A description of geological features, including bedrock lithology, stratigraphy, structural features, glacial features, unconsolidated deposits, and mineral resources;

(B) A description of the soils, including the types, occurrence, physical and chemical characteristics, erodability and potential for mass soil movement;

(C) A description showing the location of existing and potential geological and soil hazards and problems, including earthquakes, faults, seepage, subsidence, solution cavities, active and abandoned mines, erosion, and mass soil movement, and an identification of any large landslides or potentially unstable soil masses which could be aggravated by reservoir fluctuation;

(D) The existence of any disposal sites especially those listed under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA) and the National Priorities List (NPL); and

(E) A description of the anticipated erosion, mass soil movement and other impacts on the geological and soil resources due to construction and operation of the proposed project.

(iii) *Water Resources.* A description of the water resources of the proposed project and surrounding area. The applicant should address the quantity and quality (chemical/physical parameters) of all waters affected by the project including but not limited to the project's reservoir(s), tributaries to the reservoir, the bypassed reach, and tailrace. To the extent known, available, and applicable, this section should include:

(A) Drainage area, the monthly minimum, mean, and maximum recorded flows in cubic feet per second of the stream or other body of water at the powerplant intake or point of diversion, with a specification of any adjustment made for evaporation, leakage minimum flow releases (including duration of releases) or other reductions in available flow; a flow duration curve indicating the period of record and the location of gauging station(s), including identification number(s), used in deriving the curve; and a specification of the critical streamflow used to determine the project's dependable capacity;

(B) A description of existing instream flow uses of streams in the project area that would be affected by construction and operation; estimated quantities of water discharged from the proposed project for power production; and any existing and proposed uses of project waters for irrigation, domestic water supply, industrial and other purposes, including any upstream or downstream requirements or constraints to accommodate those purposes;

(C) A description of the seasonal variation of existing water quality data for any stream, lake, or reservoir that would be affected by the proposed project, including measurements of: significant ions, heavy metals, hazardous organic compounds, chlorophyll a, nutrients, specific conductance, pH, total dissolved solids, total alkalinity, total hardness, dissolved oxygen, bacteria, temperature, suspended sediments, turbidity and vertical illumination;

(D) A description of any existing lake or reservoir and any of the proposed project reservoirs including surface area, volume, maximum depth, mean depth, flushing rate, shoreline length, substrate classification, and gradient for streams directly affected by the proposed project;

(E) A description of the anticipated impacts of any proposed construction and operation of project facilities on downstream flows, including stream geomorphology, and water quality, such as temperature, turbidity and nutrients;

(F) A description of groundwater in the vicinity of the proposed project, including water table and artesian conditions, the hydraulic gradient, the degree to which groundwater and surface water are hydraulically connected, aquifers and their use as water supply, and the location of springs, wells, artesian flows and disappearing streams.

(iv) *Fish and Aquatic Resources.* A description of the fish and other aquatic resources, including invasive species, of the proposed project and surrounding area. The section should address the existing fish and macroinvertebrate communities, including the presence or absence of anadromous or catadromous fish and any known impacts on the aquatic community. To the extent known and available, this section should include:

(A) A description of existing fish and aquatic communities of the proposed project area and its vicinity, including any upstream and downstream areas that may be affected by the proposed project;

(B) The temporal and spacial distribution of fish and aquatic communities and any associated trends on;

(*1*) Species and life stage composition;

(*2*) Standing crop;

(*3*) Age and growth data;

(*4*) Run timing;

(*5*) The extent and location of spawning, rearing, feeding, and wintering habitat; and

(*6*) Essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act.

(v) *Wildlife and Botanical Resources.* A description of the wildlife and botanical resources, including invasive species, of the proposed project and surrounding area, to the extent known and available, including:

(A) A description of the upland habitat(s) within and around the project area, including the area within the transmission line corridor or right-of-way, and a listing of plant and animal species that use the habitat(s); and

(B) The temporal or spacial distribution of species considered important because of their commercial or recreational value.

(vi) *Wetlands and Riparian Habitat.* A description of the floodplain, wetlands and riparian habitats, including invasive species, of the proposed project and surrounding area, to the extent known and available, including a listing of plant and animal species, including invasive species, that use the habitat.

(vii) *Rare, Threatened and Endangered Species.* A description of any Rare, Threatened and Endangered Species that may be present in the vicinity or surrounding area of the proposed project, to the extent known and available, include:

(A) A listing of both Federal- and state-listed, or proposed to be listed, threatened and endangered species present in the project area;

(B) Identification of habitat requirements;

(C) A reference to any known biological opinion, status reports, or recovery plans pertaining to listed species; and

(D) The extent and location of any critical habitat, or other habitat for listed species in the project area;

(vii) *Recreation and Land Use.* A description of the recreation uses (including public use), facilities or measures as well as land uses, ownership and management of the proposed project and surrounding area. This section should address recreation opportunities associated with the reservoir(s), river, and project lands; conservation of shore lands and riparian areas; and public access, flow, facilities, aesthetics, reservoir levels, and safety measures. In preparing this section the applicant should consider the needs of persons with disabilities. The section should distinguish between different kinds of recreational opportunities (*e.g.,* various types of boating—challenge white water or scenic canoeing or power boating; and fishing activities—drift boat fishing or wading or bank fishing). To the extent known and available, this section should include:

(A) A consideration of whether the river on which the project is located is:

(*1*) Within the same basin, as a designated part of, or under study for inclusion in the National Wild & Scenic River System;

(*2*) Listed on the Nationwide Rivers Inventory (NRI); and/or

(*3*) Part of a state river protection program;

(B) A consideration of whether any project lands are designated as part of, or under study for inclusion in, the National Trails System or designated as, or under study for inclusion as, a Wilderness Area;

(C) A detailed description of the existing recreational facilities (*i.e.* type, location, capacity, usage, condition, ownership and management) within the project vicinity;

(D) A detailed description of other recreational uses of project lands, waters, and riparian areas (*i.e.* types number, locations capacity information);

(E) Any provision for a shoreline buffer zone around the reservoir and/or river shoreline that must be within the project boundary, above the normal maximum surface elevation of the project reservoir, and of sufficient width to allow public access to project lands and waters and to protect the scenic, public recreational, cultural, and other environmental values of the reservoir and river shoreline;

(F) Any existing measures required by any local, State, Tribal, or Federal permit or license, any measure voluntarily constructed, operated or maintained, by the applicant, to protect recreation opportunities or land uses of the proposed project and surrounding area;

(G) Any future recreation needs identified in the current State Comprehensive Outdoor Recreation Plans, other plans on file with the Commission, or other relevant local, State, and regional conservation and recreation plans and activities; and

(H) A description of the applicant's policy, if any, with regard to permitting development of piers, docks, boat landings, bulkheads, and other shoreline facilities on project lands and waters.

(ix) *Aesthetic Resources.* A description of the visual characteristics of the lands and waters affected by the project. To the extent known and available, this section should include a description of the dam, natural water features, and other scenic attractions of the project and surrounding vicinity.

(x) *Cultural Resources.* A description of the known cultural or historical resources of the proposed project and surrounding area, to the extent known and available, including:

(A) An identification of any historic or archaeological site in the proposed project area, with particular emphasis on sites or properties either listed in, or recommended by the State Historic Preservation Officer or Tribal Historic Preservation Officer for inclusion in, the National Register of Historic Places that could be affected by the construction or operation of the proposed project; and

(B) A description of any existing discovery measures, such as surveys, inventories, and limited subsurface testing work, for the purpose of locating, identifying, and assessing the significance of historic and archaeological resources that have been undertaken at the project or on project lands; and

(C) Identification of Indian tribes that may attach religious and cultural significance to historic properties within the project boundary or in the surrounding area; as well as available information on Indian traditional cultural and religious properties. (Note: National Historic Preservation Act regulations include a reminder that tribal concerns relating to cultural and historic properties are not limited to reservation lands. Frequently, historic properties of religious and cultural significance are located on ancestral, aboriginal or ceded lands of Indian Tribes.) An applicant must delete from any information made available under this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(xi) *Socio-economic Resources.* A description of the socio-economic resources of the proposed project and surrounding area, to the extent known and available, including:

(A) A description of the employment, population, housing, personal income, local governmental services, local tax revenues and other factors within the towns and counties in the vicinity of the proposed project;

(B) A description of employment, population and personal income trends in the project vicinity ; and

(C) Identification of any environmental justice issues.

(xii) *Tribal Resources.* This section should include information on Indian tribes, tribal lands, resources, and interests that may be affected by the project, to the extent known. Tribal resources to be addressed here will generally include some or all of the resources discussed or listed in the other resource related sections. For example, erosion affecting tribal cultural sites may be discussed in multiple

resource sections. To the extent known, the applicant should also identify certain tribal-specific issues that do not neatly fit into the other discrete resource sections. Such issues may include identification of tribal fishing practices at the project, land use, or agreements between the applicant and an Indian Tribe.

(H) Copies of any approved Exhibit F showing all major project structures in sufficient detail to provide a full understanding of the project, including:

(*1*) Plan view;

(*2*) Elevation view; and

(*3*) Section view.

(I) Copies of any approved Exhibit G showing:

(*1*) The location of the project and principle project features;

(*2*) Project boundary, if required under the current license;

(*3*) Recreation facilities or areas; and

(*4*) Federal, tribal, state lands.

(J) A list of issues, by resource area, in the form of a scoping document. The applicant should identify:

(*1*) Resource issues by resource area, including any issues raised during any initial contact with the entities identified in paragraph (b)(1) of this section;

(*2*) Resource management plans and objectives related to the project area and prepared by the potential applicant or any resource agency;

(*3*) Existing studies that have already been completed; and

(*4*) Preliminary information or studies needed.

(K) The following construction and operation information, if applicable:

(*1*) The original license application and the order issuing the license and any subsequent license application and subsequent order issuing a license for an existing project, including approved Exhibit drawings not listed in paragraphs (c)(2)(xii)(H) and (I) of this section, including as-built exhibits; any order issuing amendments or approving exhibits, and any order issuing annual licenses for the existing project; and

(*2*) A copy of any state issued water quality certificate under section 401 of the Clean Water Act;

(*3*) All data relevant to whether the project is and has been operated in accordance with the requirements of each license article, including minimum flow requirements, ramping rates, reservoir elevation limitations, and environmental monitoring data;

(*4*) A compilation of project generation and respective outflow with time increments not to exceed one hour, unless use of another time increment can be justified, for the period beginning five years before the filing of a notice of intent;

(*5*) Any report on the total actual annual generation, the total value of annual generation, and annual operation and maintenance costs for the period beginning five years before the filing of a notice of intent;

(*6*) Any reports on original project costs, current net investment, and available funds in the amortization reserve account; and

(*7*) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system or point of use.

(L) If applicable, the applicant must also provide the following safety and structural adequacy information in the PAD:

(*1*) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(*2*) Any independent consultant's reports required by part 12 of this chapter and filed on or after January 1, 1981;

(*3*) Any report on operation or maintenance problems, other than routine maintenance, occurring within the five years preceding the filing of a notice of intent or within the most recent five-year period for which data exists, and associated costs of such problems under the Commission's Uniform System of Accounts;

(*4*) Any construction report for an existing project; and

(*5*) Any public correspondence relating to the safety and structural adequacy of the existing project.

(M) If applicable, the applicant must also provide the following energy conservation information under section 10(a)(2)(C) of the Federal Power Act, related to the licensee's efforts to conserve electricity or to encourage conservation by its customers including any:

(*1*) Plan of the licensee;

(*2*) Public correspondence; and

(*3*) Other pertinent information relating to a conservation plan.

(O) If applicable, the applicant must also provide a statement of whether or not it will seek benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter. If benefits under section 210 of PURPA are sought, a statement of whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter), and a request for the agencies' view on that belief, if any.

(P) A plan and schedule for all pre-application activity that includes any time frames for pre-application actions set forth in this part, that to the extent reasonably possible maximizes coordination of Federal, state, and tribal permitting and certification processes (process plan), and which contemplates finalization of the applicant's information-gathering and study plan provided for in §§ 5.9–5.14, including any dispute resolution, within one year of the applicant's notification of intent, and approximately two years for studies and application development.

§ 5.5 Commission notice.

(a) *Notices.* Within 30 days of the notification required under § 5.3, filing of the Pre-Application Document pursuant to § 5.4, and filing of any request to use the traditional licensing process or alternative procedures, the Commission will provide notice by:

(1) Publishing notice in the **Federal Register**;

(2) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(3) Notifying the appropriate Federal and state resource agencies, state water quality agencies, Indian tribes, and non-governmental organizations by mail; of:

(i) The decision of the Director of the Office of Energy Projects on any request to use the traditional licensing process or alternative procedures.

(ii) If the potential license application is to be developed and filed pursuant to this part:

(A) The applicant's intent to file a license application;

(B) The filing of the Pre-Application Document;

(C) Assignment of a project number and commencement of a proceeding;

(D) A request for comments on the Pre-Application Document (including the proposed process plan and schedule);

(E) A statement that all communications to or from the Commission staff related to the merits of the proceeding shall be placed into the record;

(F) Any request for other Federal or state agencies or Indian tribes to be cooperating agencies for purposes of developing an environmental document;

(G) The Commission's intent with respect to preparation of an environmental impact statement; and

(H) A public meeting and site visit to be held within 30 days of the notice.

(b) *Scoping meeting and site visit.* The purpose of the public meeting and site visit is to:

(1) Initiate environmental issues scoping pursuant to the National Environmental Policy Act;

(2) Review and discuss existing conditions and resource management objectives;

(3) Review and discuss existing information and make preliminary identification of information needs;

(4) Develop a process plan and schedule for pre-filing activity that to the extent reasonably possible maximizes coordination of Federal, state, and tribal permitting and certification processes;

(5) Discuss the appropriateness of the license applicant for designation as the Commission's non-Federal representative for purposes of consultation under the Endangered Species Act or Magnuson-Stevens Fishery Conservation and Management Act; and

(6) Discuss the appropriateness of any Federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document pursuant to the National Environmental Policy Act.

(c) *Method of Notice.* The public notice provided for in this section, and the public notice of application tendering and notice that the application is accepted and ready for environmental analysis provided for in § 5.18 and § 5.21, respectively, will given by:

(1) Publishing notice in the **Federal Register**;

(2) Publishing notice once every week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated, and, as appropriate, tribal newspapers;

(3) Notifying appropriate Federal, state, and interstate resource agencies, Indian tribes, and non-governmental organizations by mail.

§ 5.6 Comments and information requests.

(a) *Filing requirements.* Comments on the Pre-Application Document, and requests for information by all participants, including Commission staff, must be filed with the Commission within 60 days following the Commission's notice pursuant to § 5.5 of the notification of intent and Pre-Application Document. Comments may include initial information requests and study requests.

(b) *Applicant seeking PURPA benefits; estimate of fees.* If an applicant has stated that it intends to seek PURPA benefits, comments on the Pre-Application document by a fish and wildlife agency must provide the applicant with a reasonable estimate of the total costs the agency anticipates it will incur and set mandatory terms and conditions for the proposed project. An agency may provide an applicant with an updated estimate as it deems necessary. If any agency believes that its most recent estimate will be exceeded by more than 25 percent, it must supply the applicant with a new estimate and submit a copy to the Commission.

§ 5.7 Revised pre-application document.

(a) Within 45 days following the receipt of comments on the Pre-Application Document, including information and study requests, the Applicant shall file with the Commission a revised Pre-Application Document and proposed study plan.

(b) The revised Pre-Application Document shall include copies of comments on the initial Pre-Application Document, a description of consultation between the Applicant and the participants with respect to information and study proposals and, if the Applicant does not agree to an information or study request, shall explain why the information is unnecessary.

§ 5.8 Applicant's proposed study plan.

(a) The Applicant's proposed study plan to accompany the revised Pre-Application Document shall include with respect to each proposed study:

(1) A detailed description of the study and the methodology to be used;

(2) A schedule; and

(3) Provisions for status reports and opportunities for a meeting or periodic meetings to evaluate the data being collected.

(b) The applicant's proposed study plan must:

(1) Describe the goals and objectives of the study and the information to be obtained;

(2) Address any known resource management goals of the agencies with jurisdiction over the resource to be studied;

(3) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(4) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(5) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers any known tribal interests;

(6) Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.

§ 5.9 Scoping document and study plan meeting.

(a) Within 30 days following submittal of the revised Pre-Application Document and proposed study plan, the Commission will issue Scoping Document 1 and public notice of a study plan meeting to be held within 60 days for the purpose of discussing the Applicant's proposed study plan.

(b) Scoping Document 1 will include:

(1) An introductory section describing the purpose of the scoping document, the date and time of the study plan meeting, procedures for submitting written comments, and a request for information from state and Federal resource agencies, Indian tribes, non-governmental organizations, and individuals;

(2) Identification of the proposed action, including a description of the project's location, facilities, and operation, and any proposed protection and enhancement measures, and other alternatives to the proposed action, including alternatives considered but eliminated from further study and the no-action alternative;

(3) Identification of resource issues to be analyzed in the environmental document, including those that would be cumulatively affected along with a description of the geographic and temporal scope of the cumulatively-affected resources;

(4) A list of qualifying Federal and state comprehensive waterway plans;

(5) A process plan and schedule and draft outline of the environmental document;

(6) A list of recipients; and

(7) The applicant's proposed study plan in an appendix.

§ 5.10 Comments and information-gathering or study requests.

(a) *Comments on SD1 and study plan.* Comments on Scoping Document 1 and the Applicant's proposed study plan, including any information or study requests, must be filed within 30 days from the issuance of Scoping Document 1.

(b) *Content of study request.* Any information or study request must:

(1) Describe the goals and objectives of the study and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or tribes with jurisdiction over the resource to be studied;

(3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate filed season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge;

(7) Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.

§ 5.11 Study plan meeting.

A study plan meeting shall be held within 30 days of the deadline date for filing of information-gathering and study requests for the purpose of clarifying such requests as necessary and resolving any outstanding issues with respect to the proposed study plan.

§ 5.12 Revised study plan and preliminary determination.

(a) Within 30 days following the study plan meeting provided for in § 5.11, the Applicant shall file a revised study plan for Commission approval. The revised study plan shall include the comments on the proposed study plan and a description of the efforts made to resolve differences over study requests. If the applicant does not adopt a requested study, it shall explain why the request was not adopted, with reference to the criteria set forth in § 5.10.

(b) Within 30 days from the date the Applicant files its revised study plan, the Commission will issue a Preliminary Determination with regard to the Applicant's study plan, including any modifications determined to be necessary in light of the record.

(c) If no notice of study dispute is filed pursuant to § 5.13 within 20 days of the Preliminary Determination, the study plan as approved in the Preliminary Determination shall be deemed to be approved and final, and the Commission will issue an order directing the Applicant to proceed with the approved studies.

§ 5.13 Study dispute resolution process.

(a) Within 20 days of the Preliminary Determination, any Federal agency with authority to provide mandatory conditions on a license pursuant to FPA section 4(e), 16 U.S.C. 797(e), or to prescribe fishways pursuant to FPA section 18, 16 U.S.C. 811, or any state agency or Indian tribe with authority to issue a water quality certification for the project license under section 401 of the Clean Water Act, 42 U.S.C. 1341, may file a notice of study dispute with regard to the preliminary determination.

(b) The notice of study dispute shall explain how the criteria set forth in section 5.10 of this part have been satisfied.

(c) Studies and portions of study plans approved in the Preliminary Determination that are not the subject of a notice of dispute shall be deemed to be approved and final, and the Applicant shall proceed with those studies or portions thereof.

(d) Within 20 days of a notice of study dispute, the Commission will convene one or more three-person Dispute Resolution Panels, as appropriate to the circumstances of each proceeding. Each such panel will consist of:

(1) A person from the Commission staff or a contractor in the Commission's employ who is not otherwise involved in the proceeding;

(2) One person designated by the Federal or state agency or Indian tribe that filed the notice of dispute who is not otherwise involved in the proceeding; and

(3) A third person selected by the other two panelists from a pre-established list of persons with expertise in the resource area. If no third panel member has been selected by the other two panelists within 15 days, those two panel members will carry out the duties of the panel, as described herein.

(e) If more than one agency or tribe files a notice of dispute with respect to the decision in the Preliminary Determination on any information-gathering or study request, the disputing agencies or tribes shall select one person to represent their interests on the panel.

(f) The list of persons available to serve as a third panel member will be posted, as revised from time-to-time, on the hydroelectric page of the Commission's website. Persons willing to serve in this capacity should serve on the Director of the Office of Energy Projects a statement of their qualifications with respect to the resource with which they have applicable expertise. A person on the list who is requested and willing to serve with respect to a specific dispute will be required to file with the Commission at that time a current statement of their qualifications and a statement that they have had no prior involvement with the proceeding in which the dispute has arisen, or other financial or other conflict of interest.

(g) All costs of the panel members representing the Commission staff and the agency or Tribe which served the notice of dispute will be borne by the Commission or the agency or Tribe, as applicable. The third panel member will serve without compensation, except for certain allowable travel expenses as defined in 31 CFR part 301.

(h) To facilitate the delivery of information to the dispute resolution panel, the identity of the panel members and their addresses for personal service with respect to a specific dispute resolution will be posted on the hydroelectric page of the Commission's web site.

(i) No later than 25 days following the notice of study dispute, the Applicant may file with the Commission and serve upon the panel members comments and information regarding the dispute.

(j) The panel will make a finding, with respect to each information or study request in dispute, as to whether the criteria set forth in § 5.10 are met or not met, and why, and provide to the Director of the Office of Energy Projects a recommendation based on its findings. No later than 50 days following the notice of study dispute, the panel shall file that recommendation with the Commission, a written recommendation to the Director of Energy Projects with respect to each information or study request in dispute, including all of the materials received by the panel. Any recommendation for the Applicant to provide information or a study shall include the technical specifications, including data acquisition techniques and methodologies.

(k) No later than 70 days from the date of filing of the notice of study dispute, the Director of Energy Projects will review and consider the recommendations of the panel, and will issue a written decision. The Director's decision will be made with reference to the study criteria set forth in § 5.10 and any applicable law or Commission policies and practices. The Director's decision shall constitute an amendment to the approved study plan.

(l) The Commission will, if necessary, issue a Scoping Document 2 within 30 days following the Director's decision or, if no dispute resolution is required, the Preliminary Decision.

§ 5.14 Conduct of studies.

(a) *Initial Status Report.* (1) At an appropriate time following the first season of studies or other appropriate time, the applicant shall prepare and file with the Commission an initial status report containing study results and analyses to date.

(2) Promptly following the filing of the initial status report, the applicant shall hold a meeting with the parties and Commission staff to discuss the study results and the applicant's and or other party's proposals, if any, to modify the study plan in light of study results and analyses to date.

(3) Promptly following the meeting provided for in paragraph (a)(2) of this section, the applicant shall file a meeting summary and request to amend the approved study plan, as necessary.

(4) Any party or the Commission staff may file a disagreement concerning the applicant's meeting summary and request to amend the approved study plan within 15 days, setting forth the basis for the dispute, and explaining what modifications, if any, should be made to the approved study plan.

(5) Responses to any filings made pursuant to paragraph (a)(4) of this section shall be filed within 15 days.

(6) No later than 15 days following the due date for responses provided for in paragraph (a)(5) of this section, the Director will issue an order resolving the disagreement, amending the approved study plan as appropriate, and directing the applicant to complete the study plan as amended.

(7) If no party or the Commission staff files a disagreement concerning the applicant's meeting summary and request to amend the approved study plan within 15 days, the proposed amendment shall be deemed to be approved.

(b) *Additional information.* Any request for additional information or study in response to the initial status report must be accompanied by a showing of good cause why the request should be approved, and which must provide, as appropriate to the facts of the case, a:

(1) Demonstration that approved studies were not conducted as provided for in the approved study plan;

(2) Demonstration that the study was conducted under anomalous environmental conditions or that environmental conditions have changed in a material way;

(3) Statement of material changes in the law or regulations applicable to information request;

(4) Statement explaining why the objectives of any approved study to which the information request relates cannot be achieved using existing data;

(5) Statement explaining why the request was not made earlier;

(6) Statement explaining significant changes in the project proposal or that significant new information material to the study objectives has become available; and

(7) In the case of a new study, an explanation why the study request satisfies the study criteria in § 5.12.

(c) *Updated Status Report.* After the second field season of studies or other appropriate time following the initial status report, the applicant shall prepare and file an updated status report. The review, comment, and disagreement resolution provisions of paragraphs (a)(4)–(7) of this section shall apply to the updated status report, and any request for additional information or study in response to the updated report must be accompanied by a demonstration of extraordinary circumstances warranting approval of the request, and must address the criteria set forth in paragraphs (b)(1)–(7) of this section, as appropriate to the facts of the case. The applicant shall promptly proceed to complete any remaining undisputed information-gathering or studies under its proposed amendments to the study plan, if any, and shall proceed to complete any information-gathering or studies that are the subject of a disagreement upon the Director's order resolving the disagreement.

§ 5.15 Draft license application.

(a) Following the filing of the updated status report, but no later than 150 days prior to the deadline for filing a new or subsequent license application, if applicable, the Applicant shall file for comment a draft license application.

(b) The draft license application shall contain, to the extent practicable, the contents required for license applications by part 4, subpart E, F, or G and §§ 16.9 and 16.10 of this chapter, except that the Exhibit E required to be included with an application filed under this part must meet the form and contents of Exhibit E set forth in § 5.17(b).

(c) An applicant that has been designated as the Commission's non-Federal representative may include a draft Biological Assessment, Essential Fish Habitat Assessment, and draft Historic Properties Management Plan with its draft license application.

(d) Within 90 days of the date the Applicant files the draft license application, parties and the Commission staff may file comments on the draft application, which may include recommendations on whether the Commission should prepare an Environmental Assessment (with or without a draft Environmental Assessment) or an Environmental Impact Statement. Any party whose comments request new information, studies, or other amendments to the approved study plan must include a demonstration of extraordinary circumstances, pursuant to the requirements of § 5.14(b).

§ 5.16 Filing of application.

(a) *Timing of application.* An application for a new or subsequent license shall be filed no later than 24 months before the existing license expires.

(b) *Subsequent licenses.* An applicant for a subsequent license must file its application under part I of the Federal Power Act. The provisions of section 7(a) of the Federal Power Act do not apply to licensing proceedings involving a subsequent license.

(c) *Applicant notice.* An applicant for a subsequent license that proposes to expand an existing project to encompass additional lands must include in its application a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

(d) *Filing and service.* (1) Each applicant for a license under this part must submit to the Commission's Secretary for filing an original and eight copies of the application. The applicant must serve one copy of the application or petition on the Director of the Commission's Regional Office for the appropriate region and on each resource agency, Indian tribe, or member of the public consulted pursuant to this part.

(2)(i) An applicant must make information regarding its project reasonably available to the public for inspection and reproduction, from the date on which the applicant files its application for a license until the licensing proceeding for the project is terminated by the Commission. This information includes a copy of the complete application for license, together with all exhibits, appendices, and any amendments, pleadings, supplementary or additional information, or correspondence filed by the applicant with the Commission in connection with the application.

(ii) An applicant must delete from any information made available to the public under this section, specific site or property locations the disclosure of which would create a risk of harm, theft,

or destruction of archeological or native American cultural resources or to the site at which the sources are located, or would violate any Federal law, include the Archeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(3)(i) An applicant must make available the information specified in paragraph (c)(2) of this section in a form that is readily accessible, reviewable, and reproducible, at the same time as the information is filed with the Commission or required by regulation to be made available.

(ii) An applicant must make the information specified in paragraph (c)(2) of this section available to the public for inspection:

(A) At its principal place of business or at any other location that is more accessible to the public, provided that all of the information is available in at least one location:

(B) During regular business hours; and

(C) In a form that is readily accessible, reviewable, and reproducible.

(iii) The applicant must provide a copy of the complete application (as amended) to a public library or other convenient public office located in each county in which the proposed project is located.

(iv) An applicant must make requested copies of the information specified in paragraph (c)(2) of this section available either:

(A) At its principal place of business or at any other location that is more accessible to the public, after obtaining reimbursement for reasonable costs of reproduction; or

(B) Through the mail, after obtaining reimbursement for postage fees and reasonable costs of reproduction.

(4) Anyone may file a petition with the Commission requesting access to the information specified in paragraph (c)(2) of this section if it believes that the applicant is not making the information reasonably available for public inspection or reproduction. The petition must describe in detail the basis for the petitioner's belief.

(5) An applicant must publish notice twice of the filing of its application, no later than 14 days after the filing date in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must disclose the filing date of the application and briefly summarize it, including the applicant's name and address, the type of facility applied for, its proposed location, and the places where the information specified in paragraph (c)(2) of this section is available for inspection and reproduction. The applicant must promptly provide the Commission with proof of the publication of this notice.

(e) *PURPA benefits.* (1) Every application for a license for a project with a capacity of 80 megawatts or less must include in its application copies of the statements made under § 4.38(b)(1)(vi) of this chapter.

(2) If an applicant reverses a statement of intent not to seek PURPA benefits:

(i) Prior to the Commission issuing a license, the reversal of intent will be treated as an amendment of the application under § 4.35 and the applicant must:

(A) Repeat the pre-filing consultation process under this part; and

(B) Satisfy all the requirements in § 292.208 of this chapter; or

(ii) After the Commission issues a license for the project, the applicant is prohibited from obtaining PURPA benefits.

(f) *Limitations on submitting applications.* The provisions of §§ 4.33(b), (c), and (e) of this chapter apply to license applications filed under this section.

(g) *Rejection or dismissal.* If the Commission rejects or dismisses an application for a new or subsequent license filed under this part pursuant to the provisions of § 5.19, the application may not be refiled after the new or subsequent license application filing deadline specified in paragraph (a) of this section.

§ 5.17 Application content.

(a) Each license application filed pursuant to this part must:

(1) Identify every person, citizen, association of citizens, domestic corporation, municipality, or state that has or intends to obtain and will maintain any proprietary right necessary to construct, operate, or maintain the project;

(2) Identify (providing names and mailing addresses):

(i) Every county in which any part of the project, and any Federal facilities that would be used by the project, would be located;

(ii) Every city, town, or similar local political subdivision:

(A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(B) That has a population of 5,000 or more people and is locate within 15 miles of the project dam;

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(B) That owns, operates, maintains, or uses any project facilities that would be used by the project;

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application; and

(v) All Indian tribes that may be affected by the project.

(3)(i) For a license (other than a license under Section 15 of the Federal Power Act) state that the applicant has made, either at the time of or before filing the application, a good faith effort to give notification by certified mail of the filing of the application to:

(A) Every property owner or record of any interest in the property within the bounds of the project, or in the case of the project without a specific project boundary, each such owner of property which would underlie or be adjacent to any project works including any impoundments; and

(B) The entities identified in paragraph (a)(2) of this section, as well as any other Federal, state, municipal or other local government agencies that there is reason to believe would likely be interested in or affected by such application.

(ii) Such notification must contain the name, business address, and telephone number of the applicant and a copy of Exhibit G contained in the application, and must state that a license application is being filed with the Commission.

(4)(i) As to any facts alleged in the application or other materials filed, be subscribed and verified under oath in the form set forth in paragraph (a)(3)(ii) of this section by the person filing, an officer thereof, or other person having knowledge of the matters set forth. If the subscription and verification is by anyone other than the person filing or an officer thereof, it shall include a statement of the reasons therefor.

(ii) This application is executed in the

State of _____

County of _____

By: _____

(Name) _____

(Address) _____

being duly sworn, depose(s) and say(s) that the contents of this application are true to the best of (his or her) knowledge or belief. The undersigned applicant(s) has (have) signed the application this_____day_____, 2____.

_____

(Applicant(s))

By: _____

Subscribed and sworn to before me, a [Notary Public, or title of other official

authorized by the state to notarize documents, as appropriate] this ____day of _____, 2___.
/SEAL [if any]

_____
(Notary Public, or other authorized official)

(5) Contain the information and documents prescribed in the following sections of this chapter, except as provided in paragraph (b) of this section, according to the type of application:

(i) License for a minor water power project and a major water power project 5 MW or less: § 4.61 of this chapter;

(ii) License for a major unconstructed project and a major modified project: § 4.41 of this chapter;

(iii) License for a major project—existing dam: § 4.51 of this chapter; or

(iv) License for a project located at a new dam or diversion where the applicant seeks PURPA benefits: § 292.208.

(b) The specifications for Exhibit E in §§ 4.41, 4.51, or 4.61 of this chapter shall not apply to applications filed under this part. The Exhibit E included in any license application filed under this part shall meet the following format and content requirements: Exhibit E is an Environmental Document. Information provided in the document must be organized according to paragraphs (b)(1) and (2) of this section, as appropriate. The Environmental Document must address resources listed in the Pre-Application Document provided for in § 5.3. In preparing the Environmental Document, the applicant shall follow the Commission's ''Preparing Environmental Assessments: Guidelines for Applicants, Contractors, and Staff.'' The Environmental Assessment Guidelines may be viewed on the Commission's Web site or through its Public Reference Room.

(1) *Environmental Document Contents:*

(i) *General Description of the River Basin.* Describe the river system, including relevant tributaries; give measurements of the area of the basin and length of stream; identify the project's river mile designation or other reference point; describe the topography and climate; and discuss major land uses and economic activities

(ii) *Cumulative Effects.* List cumulatively affected resources based on the Commission's Scoping Document, consultation, and study results. Discuss the geographic and temporal scope of analysis for those resources. Describe how resources are cumulatively affected and explain the choice of the geographic scope of analysis. Include a brief discussion of past, present, and future actions, and their effects on resources based on the new license term (30–50 years). Highlight the effect on the cumulatively affected resources from reasonably foreseeable future actions. Discuss past actions' effects on the resource in the Affected Environment section.

(iii) *Applicable Laws.* Include a discussion of the status of compliance with or consultation under the following laws, if applicable:

(A) *Section 401 of the Clean Water Act.* The applicant must file a request for a water quality certification (WQC), required by section 401 of the Clean Water Act, as provided for in this section. Describe the conditions of the water quality certificate, if known.

(B) *Endangered Species Act (ESA).* Briefly describe the consultation process used to address project effects on Federally listed or proposed species in the project vicinity. Summarize any anticipated environmental effects on these species and provide the status of the consultation process. If the applicant is the Commission's non-Federal designee for informal consultation under the ESA, the applicant's draft biological assessment shall be included.

(C) *Magnuson-Stevens Fishery Conservation and Management Act.* Document from the National Marine Fisheries Service (NMFS) and/or the appropriate Regional Fishery Management Council any essential fish habitat (EFH) that may be affected by the project. Briefly discuss each managed species and life stage for which EFH was designated. Include, as appropriate, the abundance, distribution, available habitat, and habitat use by the managed species. If the project may affect EFH, prepare an ''EFH Assessment'' of the impacts of the project. The EFH Assessment should contain the information outlined in 50 CFR 600.920(e).

(D) *Coastal Zone Management Act (CZMA).* Section 307(c)(3) of the CZMA requires that all Federally licensed and permitted activities be consistent with approved state Coastal Zone Management Programs. If the project is located within a coastal zone boundary or if a project affects a resource located in the boundaries of the designated coastal zone, the applicant must certify that the project is consistent with the state Coastal Zone Management Program. If the project is within or affects a resource within the coastal zone, provide the date the applicant sent the consistency certification information to the state agency, the date the state agency received the certification, and the date and action taken by the state agency (for example, the agency will either agree or disagree with the consistency statement, waive it, or ask for additional information). Describe any conditions placed on the state agency's concurrence and assess the conditions in the appropriate section of the license application. If the project is not in or would not affect the coastal zone, state so and cite the coastal zone program office's concurrence.

(E) *National Historic Preservation Act (NHPA).* Section 106 of NHPA requires the Commission to take into account the effect of licensing a hydropower project on any historic properties, and allow the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment on the proposed action. ''Historic Properties'' are defined as any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places (NRHP). If there would be an adverse effect on historic properties, the applicant shall include a Historic Properties Management Plan (HPMP) to avoid or mitigate the effects. The applicant shall include documentation of consultation with the Council, the State Historic Preservation Officer, and affected tribes on the HPMP.

(F) *Pacific Northwest Power Planning and Conservation Act (Act).* If the project is not within the Columbia River Basin, this section shall not be included. The Columbia River Basin Fish and Wildlife Program (Program) developed under the Act directs agencies to consult with Federal and state fish and wildlife agencies, appropriate Indian tribes, and the Northwest Power Planning Council (Council) during the study, design, construction, and operation of any hydroelectric development in the basin. Section 12.1A of the Program outlines conditions that should be provided for in any original or new license. The program also designates certain river reaches as protected from development. The applicant shall document consultation with the Council, describe how the act applies to the project, and how the proposal would or would not be consistent with the program.

(G) *Wild and Scenic Rivers and Wilderness Acts.* Include a description of any areas within or in the vicinity of the proposed project boundary that are included in, or have been designated for study for inclusion in, the National Wild and Scenic Rivers System, or that have been designated as wilderness area, recommended for such designation, or designated as a

wilderness study area under the Wilderness Act.

(iv) *Proposed Action and Action Alternatives.* (A) Explain the effects of the applicant's proposal on environmental resources. For each resource area addressed include:

(*1*) A discussion of the affected environment;

(*2*) An analysis of the proposed action and any other recommended alternatives or measures; and

(*3*) Any unavoidable adverse impacts.

(B) The Environmental Document must contain, with respect to the resources listed in the Pre-Application Document provided for in § 5.3, and any other resources identified in the Commission's environmental scoping document prepared pursuant to the National Environmental Policy Act and § 5.3, the following information, *commensurate with the scope of the project:*

(*1*) *Affected Environment.* The applicant must provide a detailed description of the affected environment or area(s) to be affected by the proposed project by each resource area. This information should be consistent with the information provided in the revised Pre-Application Document, plus any additional information on affected environment that the applicant has identified through implementation of its approved study plan.

(*2*) *Environmental Analysis.* The applicant must present the results of its studies conducted under the approved study plan by resource area and use the data generated by the studies to evaluate the beneficial and adverse environmental effects of its proposed project. This section shall also include, if applicable, a description of any anticipated continuing environmental impacts of continued operation of the project, and the incremental impact of proposed new development of project works or changes in project operation.

(*3*) *Proposed Environmental Measures.* The applicant must provide, by resource area, any proposed new environmental measures, including, but not limited to, changes in the project design or operations, to address the environmental effects identified above and its basis for proposing the measures. This section shall also include a statement of existing measures to be continued for the purpose of protecting and improving the environment and any proposed preliminary environmental measures received from the consulted resource agencies or tribes. If an applicant does not adopt a preliminary environmental measure proposed by a resource agency, Indian tribe, or member of the public, it shall include its reasons, based on project-specific information.

(*4*) *Unavoidable Adverse Impacts.* Based on the environmental analysis, discuss any adverse impacts that would occur despite the recommended environmental measures. Discuss whether any such impacts are short or long-term, minor or major, cumulative or site-specific.

(*5*) *Developmental Analysis.* (*i*) Discuss the economic benefits of the proposed action, the estimated costs of various alternatives, and environmental recommendations and their effect on project economics. Evaluate the cost of each measure considered and give the total and annual levelized costs and net benefits of:

(A) The existing conditions—the way the project operates now;

(B) As proposed by the applicant (the proposed action); and

(C) Any other action alternatives.

(*ii*) Estimate the value of the developmental resources—power generation, water supply, irrigation, navigation, and flood control—under each alternative considered. Discuss economic benefits of the project or project capacity expansion. For those measures that reduce the amount of project power or the value of the project power, estimate the cost to replace these power benefits. Provide separate economic information for each recommended measure so that the approximate cost of any reasonable combination of measures can be calculated.

(v) *Consistency with Comprehensive Plans.* Identify relevant comprehensive plans and explain how and why the proposed project would, would not, or should not comply with such plans and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan.

(vi) *Consultation Documentation.* Include a list containing the name, and address of every Federal, state, and interstate resource agency, Indian tribe, or member of the public with which the applicant consulted in preparation of the Environmental Document.

(vii) *Literature cited.* Cite all materials referenced including final study reports, journal articles, other books, agency plans, and local government plans.

(2) The applicant must also provide in the Environmental Document:

(i) Functional design drawings of any fish passage and collection facilities or any other facilities necessary for implementation of environmental measures, indicating whether the facilities depicted are existing or proposed (these drawings must conform to the specifications of § 4.39 of this chapter regarding dimensions of full-sized prints, scale, and legibility);

(ii) A description of operation and maintenance procedures for any existing or proposed measures or facilities;

(iii) An implementation or construction schedule for any proposed measures or facilities, showing the intervals following issuance of a license when implementation of the measures or construction of the facilities would be commenced and completed;

(iv) An estimate of the costs of construction, operation, and maintenance, of any proposed facilities, and of implementation of any proposed environmental measures, including a statement of the sources and extent of financing; and

(v) A map or drawing that conforms to the size, scale, and legibility requirements of § 4.39 of this chapter showing by the use of shading, cross-hatching, or other symbols the identity and location of any measures or facilities, and indicating whether each measure or facility is existing or proposed (the map or drawings in this exhibit may be consolidated).

(c) *Information to be provided by an applicant for new license: Filing requirements.*

(1) *Information to be supplied by all applicants.* All applicants for a new license under this part must file the following information with the Commission:

(i) A discussion of the plans and ability of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service, including efforts and plans to:

(A) Increase capacity or generation at the project;

(B) Coordinate the operation of the project with any upstream or downstream water resource projects; and

(C) Coordinate the operation of the project with the applicant's or other electrical systems to minimize the cost of production.

(ii) A discussion of the need of the applicant over the short and long term for the electricity generated by the project, including:

(A) The reasonable costs and reasonable availability of alternative sources of power that would be needed by the applicant or its customers, including wholesale customers, if the applicant is not granted a license for the project;

(B) A discussion of the increase in fuel, capital, and any other costs that would be incurred by the applicant or its customers to purchase or generate

power necessary to replace the output of the licensed project, if the applicant is not granted a license for the project;

(C) The effect of each alternative source of power on:

(*1*) The applicant's customers, including wholesale customers;

(*2*) The applicant's operating and load characteristics; and

(*3*) The communities served or to be served, including any reallocation of costs associated with the transfer of a license from the existing licensee.

(iii) The following data showing need and the reasonable cost and availability of alternative sources of power:

(A) The average annual cost of the power produced by the project, including the basis for that calculation;

(B) The projected resources required by the applicant to meet the applicant's capacity and energy requirements over the short and long term including:

(*1*) Energy and capacity resources, including the contributions from the applicant's generation, purchases, and load modification measures (such as conservation, if considered as a resource), as separate components of the total resources required;

(*2*) A resource analysis, including a statement of system reserve margins to be maintained for energy and capacity; and

(*3*) If load management measures are not viewed as resources, the effects of such measures on the projected capacity and energy requirements indicated separately;

(C) For alternative sources of power, including generation of additional power at existing facilities, restarting deactivated units, the purchase of power off-system, the construction or purchase and operation of a new power plant, and load management measures such as conservation:

(*1*) The total annual cost of each alternative source of power to replace project power;

(*2*) The basis for the determination of projected annual cost; and

(*3*) A discussion of the relative merits of each alternative, including the issues of the period of availability and dependability of purchased power, average life of alternatives, relative equivalent availability of generating alternatives, and relative impacts on the applicant's power system reliability and other system operating characteristics; and

(D) The effect on the direct providers (and their immediate customers) of alternate sources of power.

(iv) If an applicant uses power for its own industrial facility and related operations, the effect of obtaining or losing electricity from the project on the operation and efficiency of such facility or related operations, its workers, and the related community.

(v) If an applicant is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation.

(vi) A comparison of the impact on the operations and planning of the applicant's transmission system of receiving or not receiving the project license, including:

(A) An analysis of the effects of any resulting redistribution of power flows on line loading (with respect to applicable thermal, voltage, or stability limits), line losses, and necessary new construction of transmission facilities or upgrading of existing facilities, together with the cost impact of these effects;

(B) An analysis of the advantages that the applicant's transmission system would provide in the distribution of the project's power; and

(C) Detailed single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements in relation to the project and other principal interconnected system elements. Power flow and loss data that represent system operating conditions may be appended if applicants believe such data would be useful to show that the operating impacts described would be beneficial.

(vii) If the applicant has plans to modify existing project facilities or operations, a statement of the need for, or usefulness of, the modifications, including at least a reconnaissance-level study of the effect and projected costs of the proposed plans and any alternate plans, which in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act.

(viii) If the applicant has no plans to modify existing project facilities or operations, at least a reconnaissance-level study to show that the project facilities or operations in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act.

(ix) A statement describing the applicant's financial and personnel resources to meet its obligations under a new license, including specific information to demonstrate that the applicant's personnel are adequate in number and training to operate and maintain the project in accordance with the provisions of the license.

(x) If an applicant proposes to expand the project to encompass additional lands, a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

(xi) The applicant's electricity consumption efficiency improvement program, as defined under section 10(a)(2)(C) of the Federal Power Act, including:

(A) A statement of the applicant's record of encouraging or assisting its customers to conserve electricity and a description of its plans and capabilities for promoting electricity conservation by its customers; and

(B) A statement describing the compliance of the applicant's energy conservation programs with any applicable regulatory requirements.

(xii) The names and mailing addresses of every Indian tribe with land on which any part of the proposed project would be located or which the applicant reasonably believes would otherwise be affected by the proposed project.

(2) *Information to be provided by an applicant licensee.* An existing licensee that applies for a new license must provide:

(i) The information specified in paragraph (c)(1) of this chapter.

(ii) A statement of measures taken or planned by the licensee to ensure safe management, operation, and maintenance of the project, including:

(A) A description of existing and planned operation of the project during flood conditions;

(B) A discussion of any warning devices used to ensure downstream public safety;

(C) A discussion of any proposed changes to the operation of the project or downstream development that might affect the existing Emergency Action Plan, as described in subpart C of part 12 of this chapter, on file with the Commission;

(D) A description of existing and planned monitoring devices to detect structural movement or stress, seepage, uplift, equipment failure, or water conduit failure, including a description of the maintenance and monitoring programs used or planned in conjunction with the devices; and

(E) A discussion of the project's employee safety and public safety record, including the number of lost-time accidents involving employees and

the record of injury or death to the public within the project boundary.

(iii) A description of the current operation of the project, including any constraints that might affect the manner in which the project is operated.

(iv) A discussion of the history of the project and record of programs to upgrade the operation and maintenance of the project.

(v) A summary of any generation lost at the project over the last five years because of unscheduled outages, including the cause, duration, and corrective action taken.

(vi) A discussion of the licensee's record of compliance with the terms and conditions of the existing license, including a list of all incidents of noncompliance, their disposition, and any documentation relating to each incident.

(vii) A discussion of any actions taken by the existing licensee related to the project which affect the public.

(viii) A summary of the ownership and operating expenses that would be reduced if the project license were transferred from the existing licensee.

(ix) A statement of annual fees paid under part I of the Federal Power Act for the use of any Federal or Indian lands included within the project boundary.

(3) *Information to be provided by an applicant who is not an existing licensee.* An applicant that is not an existing licensee must provide:

(i) The information specified in paragraph (c)(1) of this section.

(ii) A statement of the applicant's plans to manage, operate, and maintain the project safely, including:

(A) A description of the differences between the operation and maintenance procedures planned by the applicant and the operation and maintenance procedures of the existing licensee;

(B) A discussion of any measures proposed by the applicant to implement the existing licensee's Emergency Action Plan, as described in subpart C of part 12 of this chapter, and any proposed changes;

(C) A description of the applicant's plans to continue safety monitoring of existing project instrumentation and any proposed changes; and

(D) A statement indicating whether or not the applicant is requesting the licensee to provide transmission services under section 15(d) of the Federal Power Act.

(4) *Location of information.* The information required to be provided by this paragraph (c) must be included in the application as a separate exhibit labeled ''Exhibit H.''

(d) *Comprehensive plans.* An application for license under this part shall include an explanation of why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan.

(e) *Response to information requests.* An application for license under this section shall respond to any requests for additional information-gathering or studies filed with comments on the draft license application. If the license applicant agrees to do the information-gathering or study, it shall provide the information or include a plan and schedule for doing so, along with a schedule for completing any remaining work under the previously approved study plan, as it may have been amended. If the applicant does not agree to any additional information-gathering or study requests made in comments on the draft license application, it shall explain the basis for declining to do so.

(f) *Water quality certification.* (1) With regard to certification requirements for a license applicant under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), the license application must include:

(i) A copy of the water quality certification;

(ii) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(iii) Evidence of waiver of water quality certification as described in paragraph (f)(1)(ii) of this section.

(2) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(3) Notwithstanding any other provision in Title 18, Chapter I, subchapter B, any application to amend an existing license, and any application to amend a pending application for a license, requires a new request for water quality certification pursuant to § 4.34(b)(5) of this chapter if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

(g) All required maps and drawings must conform to the specifications of § 4.39 of this chapter.

§ 5.18 Tendering notice and schedule.

(a) Within 14 days of the date of any application for a license developed pursuant to this part, the Commission will issue public notice of the tendering for filing of the application. The tendering notice will include a preliminary schedule for expeditious processing of the application, including dates for;

(1) Issuance of the acceptance for filing and ready for environmental analysis notice provided for in § 5.21.

(2) Filing of recommendations, preliminary terms and conditions, and fishway prescriptions;

(3) Issuance of a draft environmental assessment or environmental impact statement, or an environmental assessment not preceded by a draft;

(4) Filing of comments on the draft environmental assessment or environmental impact statement, as applicable;

(5) Filing of modified recommendations, mandatory terms and conditions, and fishway prescriptions in response to a draft NEPA document or Environmental Analysis, if no draft NEPA document is issued;

(6) Issuance of a final NEPA document, if any;

(7) In the case of a new or subsequent license application, a deadline for submission of final amendments, if any, to the application; and

(8) Readiness of the application for Commission decision.

(b) Within 30 days of the date of any application for a license developed pursuant to this part, the Director of the Office of Energy Projects will issue an order resolving any requests for a additional information-gathering or studies made in comments on the draft license application and to which the license applicant has not agreed in its application.

§ 5.19 Deficient applications.

(a) *Deficient applications.* (1) If an applicant believes that its application conforms adequately to the prefiling consultation and filing requirements of this part without containing certain required materials or information, it must explain in detail why the material or information is not being submitted and what steps were taken by the applicant to provide the material or information.

(2) Within 30 days of the date of any application for a license under this part, the Director of the Office of Energy Projects will notify the applicant if, in the Director's judgement, the application does not conform to the prefiling consultation and filing requirements of this part, and is

therefore considered deficient. An applicant having a deficient application will be afforded additional time to correct the deficiencies, not to exceed 90 days from the date of notification. Notification will be by letter or, in the case of minor deficiencies, by telephone. Any notification will specify the deficiencies to be corrected. Deficiencies must be corrected by submitting an original and eight copies of the specified materials or information to the Secretary within the time specified in the notification of deficiency.

(3) If the revised application is found not to conform to the prefiling consultation and filing requirements of this part, or if the revisions are not timely submitted, the revised application will be rejected. Procedures for rejected applications are specified in paragraph (b)(3) of this section.

(b) *Patently deficient applications.* (1) If, within 30 days of its filing date, the Director of the Office of Energy Projects determines that an application patently fails to substantially comply with the prefiling consultation and filing requirements of this part, or is for a project that is precluded by law, the application will be rejected as patently deficient with the specification of the deficiencies that render the application patently deficient.

(2) If, after 30 days following its filing date, the Director of the Office of Energy Projects determines that an application patently fails to comply with the prefiling consultation and filing requirements of this part, or is for a project that is precluded by law:

(i) The application will be rejected by order of the Commission, if the Commission determines that it is patently deficient; or

(ii) The application will be considered deficient under paragraph (a)(2) of this section, if the Commission determines that it is not patently deficient.

(3) Any application that is rejected may be submitted if the deficiencies are corrected and if, in the case of a competing application, the resubmittal is timely. The date the rejected application is resubmitted will be considered the new filing date for purposes of determining its timeliness under § 4.36 of this chapter and the disposition of competing applications under § 4.37 of this chapter.

§ 5.20 Additional information.

An applicant may be required to submit any additional information or documents that the Commission or its designee considers relevant for an informed decision on the application. The information or documents must take the form, and must be submitted within the time, that the Commission or its designee prescribes. An applicant may also be required to provide within a specified time additional copies of the complete application, or any of the additional information or documents that are filed, to the Commission or to any person, agency, or other entity that the Commission or its designee specifies. If an applicant fails to provide timely additional information, documents, or copies of submitted materials as required, the Commission or its designee may dismiss the application, hold it in abeyance, or take other appropriate action under this chapter or the Federal Power Act.

§ 5.21 Notice of acceptance and ready for environmental analysis.

(a) When the Commission has determined that the application meets the Commission's filing requirements as specified in §§ 5.16 and 5.17, the approved study plan has been completed, any deficiencies in the application have been cured, and no other additional information is needed, it will issue public notice as required in the Federal Power Act:

(1) Accepting the application for filing and specifying the date upon which the application was accepted for filing (which will be the application filing date if the Secretary receives all of the information and documents necessary to conform to the requirements of §§ 5.1 through 5.17, as applicable, within the time frame prescribed in § 5.19;

(2) Finding that the application is ready for environmental analysis;

(3) Requesting comments, protests, and interventions;

(4) Requesting recommendations, preliminary terms and conditions, and fishway prescriptions; and

(5) Establishing the date for final amendments to applications for new or subsequent licenses; and

(6) Updating the processing schedule.

(b) If the project affects lands of the United States, the Commission will notify the appropriate Federal office of the application and the specific lands affected, pursuant to section 24 of the Federal Power Act.

(c) For an application for a license seeking benefits under section 210 of the Public Utility Regulatory Polices Act of 1978, as amended, for a project that would be located at a new dam or diversion, the applicant shall serve the public notice issued under paragraph (a)(1) of this section to interested agencies at the time the applicant is notified that the application is accepted for filing.

§ 5. 22 Response to notice.

Comments, protests, interventions, recommendations, and preliminary terms and conditions or fishway prescriptions will be due 60 days after the notice of acceptance and ready for environmental analysis.

§ 5. 23 Applications not requiring a draft NEPA document.

(a) If the Commission determines that a license application will be processed with an environmental assessment rather than an environmental impact statement and that a draft environmental assessment will not be required, the Commission will issue the environmental assessment for comment no later than 120 days from the date responses are due to the notice of acceptance and ready for environmental analysis. Each environmental assessment issued pursuant to this paragraph shall include draft license articles, a preliminary determination of consistency of each fish and wildlife agency recommendation made pursuant to Federal Power Act Section 10(j) with the purposes and requirements of the Federal Power Act and other applicable law, as provided for in § 5.25, and preliminary mandatory terms and conditions and fishway prescriptions.

(b) Comments on an environmental assessment issued pursuant to paragraph (a) of this section, including comments in response to the Commission's preliminary determination with respect to fish and wildlife agency recommendations and on preliminary mandatory terms and conditions or fishway prescriptions must be filed no later than 30–45 days after issuance of the environmental assessment, as specified in the notice accompanying issuance of the environmental assessment.

(c) Modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date for filing of comments provided for in paragraph (b) of this section, as specified in the notice accompanying issuance of the environmental analysis.

(d) The Commission will act on the license application within 60 days from the date for filing of modified mandatory prescriptions or terms and conditions.

§ 5.24 Applications requiring a draft NEPA document.

(a) If the Commission determines that a license application will be processed with an environmental impact statement, or a draft and final environmental assessment, the Commission will issue the draft environmental impact statement or

environmental assessment for comment no later than 180 days from the date responses are due to the acceptance notice issued pursuant to § 5.21.

(b) Each draft environmental document will include for comment draft license articles, a preliminary determination of the consistency of each fish and wildlife agency recommendation made pursuant to Federal Power Act section 10(j) with the purposes and requirements of the Federal Power Act and other applicable law, as provided for in § 5.21, and preliminary mandatory terms and conditions and fishways prescriptions.

(c) Comments on an environmental document issued pursuant to paragraph (b) of this section, including comments in response to the Commission's preliminary determination with respect to fish and wildlife agency recommendations and on preliminary mandatory terms and conditions or prescriptions must be filed no later than 30 to 60 days after issuance of the draft environmental document, as specified in the notice accompanying issuance of the draft environmental document.

(d) Modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date for filing of comments provided for in paragraph (c) of this section.

(e) The Commission will issue a final environmental document within 90 days following the date for filing of modified mandatory prescriptions or terms and conditions.

(f) The Commission will act on the license application from 30 to 90 days from the date the final environmental document is issued.

§ 5.25 Section 10(j) process.

(a) In connection with its environmental review of an application for license, the Commission will analyze all terms and conditions timely recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the proposed project. Submission of such recommendations marks the beginning of the process under section 10(j) of the Federal Power Act.

(b) The agency must specifically identify and explain the mandatory terms and conditions or prescriptions and their evidentiary or legal basis. The Commission may seek clarification of any recommendation from the appropriate fish and wildlife agency. If the Commission's request for clarification is communicated in writing, copies of the request will be sent by the Commission to all parties, affected resource agencies, and Indian tribes, which may file a response to the request for clarification within the time period specified by the Commission. If the Commission believes any fish and wildlife recommendation may be inconsistent with the Federal Power Act or other applicable law, the Commission will make a preliminary determination of inconsistency in the draft environmental document or, if none, the environmental analysis. The preliminary determination, for those recommendations believed to be inconsistent, shall include:

(1) An explanation why the Commission believes the recommendation is inconsistent with the Federal Power Act or other applicable law, including any supporting analysis and conclusions, and

(2) An explanation of how the measures recommended in the environmental document would equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project.

(c) Any party, affected resource agency, or Indian tribe may file comments in response to the preliminary determination of inconsistency within the time frame allotted for comments on the draft environmental document or, if none, the time frame for comments on the environmental analysis. In this filing, the fish and wildlife agency concerned may also request a meeting, telephone or video conference or other additional procedure to attempt to resolve any preliminary determination of inconsistency.

(d) The Commission shall attempt, with the agencies, to reach a mutually acceptable resolution of any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency. If the Commission decides, or an affected resource agency requests, the Commission will conduct a meeting, telephone, or video conference, or other procedures to address issues raised by its preliminary determination of inconsistency and comments thereon. The Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. Any meeting, conference, or additional procedure to address these issues will be scheduled to take place within 90 days of the date the Commission issues a preliminary determination of inconsistency. The Commission will prepare a written summary of any meeting held under this subsection to discuss 10(j) issues, including any proposed resolutions and supporting analysis, and a copy of the summary will be sent to all parties, affected resource agencies, and Indian tribes.

(e) The section 10(j) process ends when the Commission issues an order granting or denying the license application in question.

§ 5.26 Amendment of application.

(a) *Procedures.* If an applicant files an amendment to its application that would materially change the project's proposed plans of development, as provided in § 4.35 of this chapter, an agency, Indian tribe, or member of the public may modify the recommendations or terms and conditions or prescriptions it previously submitted to the Commission pursuant to §§ 5.20–5.24. Such modified recommendations, terms and conditions, or prescriptions must be filed no later than the due date specified by the Commission for comments on the amendment.

(b) *Original license.* The date of acceptance of an amendment of application for an original license filed under this part is governed by the provisions of § 4.35 of this chapter.

(c) *New or subsequent license.* The requirements of § 4.35 of this chapter do not apply to an application for a new or subsequent license, except that the Commission will reissue a public notice of the application in accordance with the provisions of § 4.35 of this chapter if a material amendment, as that term is used in § 4.35(f) of this chapter, is filed.

(d) *Timing and service.* All amendments to an application for a new or subsequent license, including the final amendment, must be filed with the Commission and served on all competing applicants no later than the date specified in the notice issued under § 5.21.

§ 5.27 Competing applications.

(a) *Site access for a competing applicant.* The provisions of § 16.5 of this chapter shall govern site access for a potential license application to be filed in competition with an application for a new or subsequent license by an existing licensee pursuant to this part, except that references in § 16.5 of this chapter to the pre-filing consultation provisions in parts 4 and 16 of this chapter shall be construed in a manner

compatible with the effective administration of this part.

(b) *Competing applications.* The provisions of § 4.36 of this chapter shall apply to competing applications for original, new, or subsequent licenses filed under this part.

(c) *New or subsequent license applications—final amendments; better adapted statement.* Where two or more mutually exclusive competing applications for new or subsequent license have been filed for the same project, the final amendment date and deadlines for complying with provisions of § 4.36(d)(2) (ii) and (iii) of this chapter established pursuant to the notice issued under § 5.21 will be the same for all such applications.

(d) *Rules of preference among competing applicants.* The Commission will select among competing applications according to the provisions of § 4.37 of this chapter.

§ 5.28 Other provisions.

(a) *Filing Requirement.* Unless otherwise provided by statute, regulation or order, all filings in hydropower hearings, except those conducted by trial-type procedures, shall consist of an original and eight copies.

(b) *Waiver of compliance with consultation requirements.* (1) If a resource agency, Indian tribe, or member of the public waives in writing compliance with any requirement of this part, an applicant does not have to comply with the requirement as to that agency, tribe, or member of the public.

(2) If a resource agency, Indian tribe, member of the public fails to timely comply with a provision regarding a requirement of this section, an applicant may proceed to the next sequential requirement of this section without waiting for the resource agency, tribe, or member of the public.

(c) *Requests for privileged treatment of pre-filing submission.* If a potential applicant requests privileged treatment of any information submitted to the Commission during pre-filing consultation (except for the information specified in § 5.4), the Commission will treat the request in accordance with the provisions in § 388.112 of this chapter until the date the application is filed with the Commission.

(d) *Conditional applications.* Any application, the effectiveness of which is conditioned upon the future occurrence of any event or circumstance, will be rejected.

(e) *Trial-type hearing.* The Commission may order a trial-type hearing on an application for a license under this part either upon its own motion or the motion of any interested party of record. Any trial-type hearing will be limited to the issues prescribed by order of the Commission. In all other cases, the hearings will be conducted by notice and comment procedures.

(f) *Notice and comment hearings.* (1) All comments and reply comments and all other filings described in this part must be served on all persons on the service list prepared by the Commission, in accordance with the requirements of § 385.2010 of this chapter. If a party or interceder (as defined in § 385.2201 of this chapter) submits any written material to the Commission relating to the merits of an issue that may affect the responsibility of particular resource agency, the party or interceder must also serve a copy of the submission on that resource agency.

(2) Time periods—waiver or modification. The Director of the Office of Energy Projects may waive or modify any of the time periods provided for in this part. A commenter or reply commenter may obtain an extension of time from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with Section 385.2008 of this chapter.

(3) Late-filed recommendations by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act and Federal Power Act section 10(j) for the protection, mitigation of damages to, and enhancement of fish and wildlife affected by the development, operation, and management of the proposed project and late-filed terms and conditions or prescriptions will be considered by Commission under section 10(a) of the Federal Power Act if such consideration would not delay or disrupt the proceeding.

(g) *License conditions and required findings*—(1) *License conditions.* (i) All licenses shall be issued on the conditions specified in section 10 of the Federal Power Act and such other conditions as the Commission determines are lawful and in the public interest.

(ii) Subject to paragraph (f)(3) of this section, fish and wildlife conditions shall be based on recommendations timely received from the fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.

(iii) The Commission will consider the timely recommendations of resource agencies, other governmental units, and members of the public, and the timely recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(iv) Licenses for a project located within any Federal reservation shall be issued only after the findings required by, and subject to any conditions that may be timely received pursuant to, section 4(e) of the Federal Power Act.

(v) The Commission will require the construction, maintenance, and operation of such fishways as may be timely prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate, pursuant to section 18 of the Federal Power Act.

(2) *Required findings.* If, after attempting to resolve inconsistencies between the fish and wildlife recommendations of a fish and wildlife agency and the purposes and requirements of the Federal Power Act or other applicable law, the Commission does not adopt in whole or in part a fish and wildlife recommendation of a fish and wildlife agency, the Commission will publish the findings and statements required by section 10(j)(2) of the Federal Power Act.

(h) *Standards and factors for issuing a new license.* (1) In determining whether a final proposal for a new license under section 15 of the Federal Power Act is best adapted to serve the public interest, the Commission will consider the factors enumerated in sections 15(a)(2) and (a)(3) of the Federal Power Act.

(2) If there are only insignificant differences between the final applications of an existing licensee and a competing applicant after consideration of the factors enumerated in section 15(a)(2) of the Federal Power Act, the Commission will determine which applicant will receive the license after considering:

(i) The existing licensee's record of compliance with the terms and conditions of the existing license; and

(ii) The actions taken by the existing licensee related to the project which affect the public.

(iii) An existing licensee that files an application for a new license in conjunction with an entity or entities that are not currently licensees of all or part of the project will not be considered an existing licensee for the purpose of the insignificant differences provision of section 15(a)(2) of the Federal Power Act.

(i) *Fees under Section 30(e) of the Act.* The requirements of subpart M, part 4 of this chapter, Fees Under Section 30(e) of the Act, apply to license applications developed under this part.

§ 5.29 Transition provisions.

(a) This part shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application required by § 5.3, is

[insert date three months following issuance date of final rule] or later.

(b) Except as provided in paragraph (c) of this section, applications for which the deadline for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule], and potential applications for original license for which the potential applicant commenced first stage pre-filing consultation pursuant to § 4.38(b) of this chapter prior to [insert date three months following issuance date of final rule], are not subject to this part, but are subject to the Commission's regulations as promulgated prior to [insert date three months following issuance date of final rule].

(c) Potential applicants for an original, new, or subsequent license subject to paragraph (b) of this section may seek to apply prefiling consultation and application processing procedures provided for under this part to the development and processing of their application, subject to the provisions of §§ 4.38(e)(4) and 16.8(e)(4) of this chapter.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OR LICENSED PROJECTS

1. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Remove the phrase ''Office of Hydropower Licensing'' throughout the part and add in its place ''Office of Energy Projects''.

§ 16.1 [Amended]

3. Amend § 16.1 by adding paragraph (c) to read as follows:

* * * * *

(c) Any potential applicant for a new or subsequent license for which the deadline for the notice of intent required by § 16.6 falls after [insert date three months following issuance date of final rule] and which wishes to develop and file its application pursuant to this part, must seek Commission authorization to do so pursuant to the provisions of part 5 of this chapter.

* * * * *

4. Amend § 16.6 as follows:

a. In paragraph (b)(9), remove the phrase ''16.16'' and add in its place the phrase ''16.7''.

b. In paragraph (d)(3), remove the phrase ''and Indian tribes by mail.'' and add in its place the phrase, ''state water quality agencies, Indian tribes, and non-governmental organizations likely to be interested in the proceedings by mail.''

c. Paragraph (e) is added.

The added text reads as follows:

§ 16.6 Notification procedures under section 15 of the Federal Power Act.

* * * * *

(e) *Transition provisions.* (1) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license is [insert date three months following issuance date of final rule] or later.

(2) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule] are subject to part 16 of this chapter as promulgated prior to [insert date three months following issuance date of final rule].

* * * * *

5. Amend § 16.7 as follows:

a. Paragraph (d)(1) is revised.

b. In paragraph (e)(1), remove the word ''information'' and add in its place the phrase ''Pre-Application Document''.

c. In paragraph (g), remove the phrase ''16.16(d)(1)(iv)'' and add in its place the phrase ''16.7(d)(1)(iv)''.

d. Paragraph (h) is added.

The revised and added text reads as follows:

§ 16.7 Information to be made available to the public at the time of notification of intent under Section 15(b) of the Federal Power Act.

* * * * *

(d) Information to be made available. (1) A potential applicant must, at the time it files its notification of intent to seek a license pursuant to § 5.3 of this chapter, provide a copy of the Pre-Application Document required by § 5.4 of this chapter to the entities specified in § 5.4 of this chapter.

* * * * *

(h) *Transition provisions.* (1) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license is [insert date three months following issuance date of final rule] or later.

(2) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule] are subject to this section as promulgated prior to [insert date three months following issuance date of final rule].

6. Amend § 16.8 as follows:

a. In paragraph (a)(1), remove everything after the phrase ''33 U.S.C. 1341(c)(1)),'' and add in its place the phrase any Indian tribe that may be affected by the project, and members of the public.''

b. Paragraph (a)(2) is revised.

c. Paragraphs (b)–(c) are revised.

d. In paragraphs (d) (1), remove the phrase ''Indian tribes and other government offices'' and add in its place the phrase ''Indian tribes, other government offices, and consulted members of the public''.

e. In paragraph (d)(2), remove the phrase ''agency and Indian tribe'' and add in its place the phrase ''agency, Indian tribe, and member of the public consulted''.

f. Paragraph (e) is revised.

g. Paragraph (f) is revised.

h. In paragraph (h), remove the phrase ''agency or Indian tribe'' and add in its place the phrase ''agency, Indian tribe, or member of the public''.

i. In paragraph (i)2(i), remove everything after the word ''until'' and add in its place ''a final order is issued on the license application.''.

j. Paragraph (j) is revised.

The revised and added text reads as follows:

§ 16.8 Consultation requirements.

(a) * * *

(2) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, and Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

(b) *First Stage of Consultation.* (1) A potential applicant for a new or subsequent license must, at the time it files its notification of intent to seek a license pursuant to § 5.3 of this chapter, provide a copy of the Pre-Application Document required by § 5.4 of this chapter to the entities specified in that paragraph.

(2) A potential applicant for a nonpower license or exemption must promptly contact each of the appropriate resource agencies, Indian tribes, and members of the public listed in paragraph (a)(1) of this section, and the Commission with the following information:

(i) Detailed maps showing existing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all existing and proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the existing project and any proposed

changes, with a description of any existing or proposed diversion of a stream through a canal or penstock;

(iii) A summary of the existing operational mode of the project and any proposed changes;

(iv) Identification of the environment affected or to be affected, the significant resources present and the applicant's existing and proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(vii) Any statement required by § 4.301(a) of this chapter.

(3) Not earlier than 30 days, but not later than 60 days, from the date of the potential applicant's letter transmitting the Pre-Application Document to the agencies, Indian tribes and members of the public under paragraph (b)(1) of this section, the potential applicant must:

(i) Hold a joint meeting, including an opportunity for a site visit, with all pertinent agencies, Indian tribes and members of the public to review the information and to discuss the data and studies to be provided by the potential applicant as part of the consultation process; and

(ii) Consult with the resource agencies, Indian tribes and members of the public on the scheduling of the joint meeting; and provide each resource agency, Indian tribe, member of the public, and the Commission with written notice of the time and place of the joint meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(4) The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must upon request promptly provide copies of these recordings or transcripts to the Commission and any resource agency, Indian tribe, or member of the public.

(5) Unless otherwise extended by the Director of Office of Energy Projects pursuant to paragraph (b)(6) of this section, not later than 60 days after the joint meeting held under paragraph (b)(3) of this section each interested resource agency, and Indian tribe, and member of the public must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than any other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(2)(vi) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its resource goals and objectives.

(6)(i) If a potential applicant and a resource agency, Indian tribe, or member of the public disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency, or Indian tribe, or member of the public may refer the dispute in writing to the Director of the Office of Energy Projects (Director) for resolution.

(ii) The entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party at the time the request is submitted to the Director. The disagreeing party may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(6)(i) or (b)(6)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director of the Office of Energy Projects pursuant to § 16.8(b)(6).

(iv) The Director will resolve disputes by an order directing the potential applicant to gather such information or conduct such study or studies as, in the Director's view, is reasonable and necessary.

(v) If a resource agency, Indian tribe, or member of the public fails to refer a dispute regarding a request for a potential applicant to obtain information or conduct studies (other than a dispute regarding the information specified in paragraph (b)(1) or (b)(2) of this section, as applicable), the Commission will not entertain the dispute following the filing of the license application.

(vi) If a potential applicant fails to obtain information or conduct a study as required by the Director pursuant to paragraph (b)(6)(iv) of this section, its application will be considered deficient.

(7) Unless otherwise extended by the Director pursuant to paragraph (b)(6) of this section, the first stage of consultation ends when all participating agencies, Indian tribes, and members of the public provide the written comments required under paragraph (b)(5) of this section or 60 days after the joint meeting held under paragraph (b)(3) of this section, whichever occurs first.

(c) *Second stage of consultation.* (1) Unless determined otherwise by the Director of the Office of Energy Projects pursuant to paragraph (b)(6) of this section, a potential applicant must complete all reasonable and necessary studies and obtain all reasonable and necessary information requested by resource agencies, Indian tribes, and members of the public under paragraph (b) of this section to which the potential applicant has agreed. The applicant shall also obtain any data and conduct any studies required by the Commission pursuant to the dispute resolution procedures of paragraph (b)(6) of this section. These studies must be completed and the information obtained:

(i) Prior to filing the application, if the results:

(A) Would influence the financial (*e.g.,* instream flow study) or technical feasibility of a project (*e.g.,* study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, reasonable alternatives to the project, the impact of the project on important natural or cultural resources (*e.g.,* resource surveys), suitable mitigation or enhancement measures, or to minimize impact on significant resources (*e.g.,* wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After filing the application but before license issuance, if the applicant otherwise complied with the provisions of paragraph (b)(1) or (b)(2) of this section, as applicable, no later than four years prior to the expiration date of the existing license and the results:

(A) Would be those described in paragraphs (c)(1)(i) (A) or (B) of this section; and

(B) Would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the new license application filing deadline.

(iii) After a new license is issued, if the studies can be conducted or the information obtained only after construction or operation of proposed facilities, would determine the success of protection, mitigation, or enhancement measures (*e.g.,* post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(7) of this section, a resource agency, Indian tribe, or member of the public requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis for its request, under paragraphs (b)(5)(i)–(vi) of this section, the potential applicant will promptly initiate the study or explain to the requesting entity why it believes the request is not reasonable or necessary. If the potential applicant declines to obtain the information or conduct the study, the potential applicant, any resource agency, Indian tribe, or consulted member of the public may refer any such request to the Director of the Office of Energy Projects for dispute resolution under the procedures and subject to the other requirements set forth in paragraph (b)(6) of this section.

(3)(i) The results of studies and information-gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32(e)(1) or (e)(2) of this section merely because the study or information gathering is not complete before the application is filed.

(4) A potential applicant must provide each resource agency, Indian tribe, and consulted member of the public with:

(i) A copy of its draft application that:

(A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comments and recommendations made by any resource agency, Indian tribe, or consulted member of the public either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information-gathering either requested by that resource agency, Indian tribe, or consulted member of the public in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertain to resources of interest to that resource agency, Indian tribe, or consulted member of the public and which were identified by the potential applicant pursuant to paragraph (b)(2)(vi) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measure; and

(iii) A written request for review and comment.

(5) A resource agency, Indian tribe, or consulted member of the public will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) of this section information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4) of this section.

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency, Indian tribe, or consulted member of the public has a substantive disagreement with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold at least one joint meeting with the resource agency, Indian tribe, other agencies, consulted member of the public and other agencies with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the written comments of the disagreeing agency's, Indian tribe's, or consulted member of the public's written comments to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures; and

(ii) Consult with the disagreeing agency, Indian tribe, other agencies with similar or related areas of interest, expertise, and responsibility, and consulted member of the public on the scheduling of the joint meeting; and provide the disagreeing resource agency, Indian tribe, consulted member of the public, or other agencies with similar or related areas of interest, expertise, or responsibility, and the Commission with written notice of the time and place of each meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(7) The potential applicant and any disagreeing resource agency, Indian tribe, or consulted member of the public may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency, Indian tribe, or consulted member of the public on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency, Indian tribe, and consulted member of the public, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section and a resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in case where a resource agency, Indian tribe, or consulted member of the public has responded with substantive disagreements.

* * * * *

(e) *Resource agency, Indian tribe, or member of the public waiver of compliance with consultation requirements.* (1) If a resource agency, Indian tribe, or consulted member of the public waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency, Indian tribe, or consulted member of the public.

(2) If a resource agency, Indian tribe, or consulted member of the public fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency, Indian tribe, or consulted member of the public to comply.

(3) The failure of a resource agency, Indian tribe, or consulted member of the public to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(4) Following [insert issuance date of final rule] a potential license applicant engaged in pre-filing consultation under this part may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

(f) *Application requirements documenting consultation and any disagreements with resource agencies, Indian tribes, or members of the public.* An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) and § 16.8(i), and must include:

(1) Any resource agency's, Indian tribe's, or member of the public's letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreements with a resource agency, Indian tribe, or consulted member of the public on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement;

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency, Indian tribe, or consulted member of the public.

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency, Indian tribe, or consulted member of the public, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation.

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan;

(7) A description of how the applicant's proposal addresses the significant resource issues raised by members of the public during the joint meeting held pursuant to paragraph (b)(2) of this section.

* * * * *

(j) *Transition provisions.* (1) This section shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license is [insert date three months following issuance date of final rule] or later.

(2) Applications for which the deadline date for filing a notification of intent to seek a new or subsequent license is prior to [insert date three months following issuance date of final rule] are subject to the provisions of § 16.8 as promulgated prior to [insert date three months following issuance date of final rule].

* * * * *

§ 16.9 [Amended]

7. Amend § 16.9 as follows:

In paragraph (d)(1)(iii), remove the phrase ''agencies and Indian tribes'' and add in its place the phrase ''agencies, Indian tribes, and non-governmental organizations''.

8. Amend § 16.10 as follows:

a. Paragraph (d) is removed.

b. Paragraph (e) is redesignated as paragraph (d) and is revised.

c. Paragraph (f) is removed.

The revised text reads as follows:

§ 16.10 Information to be provided by an applicant for new license: Filing requirements.

* * * * *

(d) *Inclusion in application.* The information required to be provided by this section must be included in the application as a separate exhibit labeled ''Exhibit H.''

* * * * *

§ 16.11 [Amended]

9. Amend § 16.11 by removing paragraph (a)(2).

§ 16.19 [Amended]

10. Amend § 16.19 by removing paragraphs (b)(3) and (b)(4).

§ 16.20 [Amended]

11. Amend § 16.20 by revising paragraph (c) to read as follows:

* * * * *

(c) *Requirement to file.* An applicant must file an application for subsequent license at least 24 months before the expiration of the existing license.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

2. Amend § 385.214 by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 385.214 Intervention (Rule 214).

(a) * * *

(2) Any State Commission, the Advisory Council on Historic Preservation, and the U.S. Departments of Agriculture, Commerce, and the Interior, and any state fish and wildlife or water quality certification agency is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b). If the period for filing notice has expired, a State Commission, the Advisory Council on Historic Preservation, and the U.S. Departments of Agriculture, Commerce, and the Interior, state fish and wildlife or water quality certification agency must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person, other than the Secretary of Energy or a State Commission, the Advisory Council on Historic Preservation, and the U.S. Departments of Agriculture, Commerce, and the Interior, and any state fish and wildlife or water quality certification agency seeking to intervene to become a party must file a motion to intervene.

* * * * *

3. Amend § 385.2201 by adding paragraph (g)(2) to read as follows:

§ 385.2201 Rules governing off the record communications (Rule 2201).

* * * * *

(g) * * *

(2) The disclosure requirement of paragraph (g)(1) of this section shall apply, with respect to communications with a cooperating agency, only to study

results, data, or other information obtained in writing or orally from the cooperating agency. Communications of a deliberative nature, including drafts of NEPA documents and related communications, are exempt from the disclosure requirement.

* * * * *

Note: The following Appendices will not be published in the Code of Federal Regulations.

Appendix A

List of Commenters

Licensees

Alaska Power & Telephone Co. (APT)
Ameren/UE
American Electric Power Company (AEP)
CHI Energy, Inc. (CHI)
Connecticut Small Power Producers Association (CSPPA)
Domtar, Inc., Madison Paper, and Great Lakes Hydro America (DM&GLH)
Domtar, Inc. (Domtar)
Duke Power Company (Duke)
Edison Electric Institute (EEI)
FAMP
FPL Energy (FPL)
Georgia Power Company (Georgia Power)
Hydroelectric Relicensing Reform Task Force (HLRTC) [299]
Idaho Power Company (IPC)
National Hydropower Association (NHA)
National Hydropower Association, American Public Power Association, and Edison Electric Institute (NHA)
New York Power Authority (NYPA)
North American Hydro (NAH)
Northeast Utilities (NEU)
PacifiCorp
Pacific Gas & Electric Co. (PG&E)
Puerto Rico Electric Power Authority (PREPA)
Seattle City Light (SCL)
Southern California Edison Company (SCE)
Southern Company (Southern)
Wausau-Mosinee Paper Corp. (Wausau)
WE Energies
Western Public Power Districts (WPPD)
Xcel Energy (Xcel)

Non-Governmental Organizations

Adirondack Mountain Club (ADK)
Alabama River Alliance (Alabama Rivers)
American Rivers (AmRivers)
American Whitewater (AW)
Appalachian Mountain Club (AMC)
Catawba-Wateree Relicensing Coalition (C–WRC)
Connecticut River Watershed Council (CRWC)
Hydropower Reform Coalition (HRC)
Kayak and Canoe Club of New York (KCCNY)
New England FLOW (NE FLOW)
New York Rivers United (NYRU)
Pacific Fishery Management Council (PFMC)
River Alliance of Wisconsin (RAW)

Federal Agencies

Advisory Council on Historic Preservation (ACHP)
Environmental Protection Agency
National Marine Fisheries Service (NMFS)
U.S. Department of the Interior (Interior)

States/State Agencies

Alaska Department of Fish and Game (ADF&G)
Alabama Division of Wildlife and Freshwater Fisheries (Alabama)
California Resources Agency, California EPA, State Water Resources Control Board (California)
California Department of Water Resources (CDWR)
California Resources Agency, California EPA, State Water Resources Control Board, Department of Fish and Game, State of California Office of the Attorney General (California)
Maryland Department of Natural Resources (Maryland DNR)
Michigan Department of Natural Resources (Michigan DNR)
New Hampshire Department of Environmental Services (NHDES)
New York State Department of Environmental Conservation (NYSDEC)
North Carolina Wildlife Resources Commission (NCWRC)
Northeast Utilities (NEU)
Oklahoma Water Resources Board (OWRB)
Placer County Water Agency (PCWA)
Snohomish County PUD and City of Everett (Snohomish)
South Carolina Division of Water Quality (SCDWQ)
State of Oregon
State of Washington
State of Virginia
State of Vermont, Agency of Natural Resources (VANR)
Washington Department of Ecology (WDOE)
Wisconsin Department of Natural Resources (Wisconsin DNR)
Wyoming Game and Fish Department (WGFD)
Wyoming Attorney General, Water and Natural Resources Division (Wyoming)

Indian Tribes

Affiliated Tribes of Northwest Indians—Economic Development Corporation (NW Indians)
Bad River Band-Lake Superior Tribe (BRB-LST)
Caddo Nation of Oklahoma (Caddo)
Coeur d'Alene Tribe
Confederated Salish-Kootenai Tribes (Salish-Kootenai)
Confederated Tribes of the Umatilla Indian Reservation (CTUIR)
Columbia River Inter-Tribal Fish Commission (CRITFC)
Duck Valley Shoshone Paiute Tribes of Nevada and Idaho (Shoshone)
Great Lakes Indian Fish and Wildlife Commission (GLIFWC)
Haudenosaunee Environmental Task Force (HETF)
Klamath River Inter-Tribal Fish and Water Commission (KRITFWC)
Klamath Tribes (KT)
Menominee Tribe of Wisconsin (Menominee)
Mississippi Band of Choctaw Indians (Choctaw)
North Fork Rancheria (NF Rancheria)
Pit River Tribal Council, Hammawi Tribe (PRT)
Quinault Indian Nation (Quinault)
St. Regis Mohawk Tribe

Individuals

Jerry Atkins
Fred Ayer
A. Williams Cass
Thomas Sullivan, Sullivan & Gomez Engineers (Sullivan)
Nancy Skancke
Doug Spalding
David Wehnes

Other

Kleinschmidt Associates (Kleinschmidt)
Long View Associates (Long View)
Troutman Sanders (Troutman)
Van Ness Feldman (Van Ness)

Appendix B

Specific Requests for Comments

¶ 48 What contents are appropriate for the Pre-Application Document?

¶ 66 Does proposed study criterion (7) or NHA's recommended study criterion (3) more appropriately deal with the issue of study costs?

¶ 90 (a) What modifications, if any, should be made to the proposed study dispute resolution process?

(b) What modifications, if any, should be made to the proposed advisory panel?

¶ 105 (a) In light of the proposal to include full public participation and mandatory, binding study dispute resolution in the traditional process, should the deadline date for filing the water quality certification application for this process remain when the license application is filed, or is there good reason to make the deadline date later?

(b) Should the deadline date for filing a water quality certification application in the ALP remain the application filing date, or be moved to a later date?

¶ 163 Should the integrated process regulations encourage license applicants to include with their draft license applications a non-binding statement of whether or not they intend to engage in settlement negotiations?

¶ 172 Should the proposed integrated process apply to original license applications?

¶ 181 Are there circumstances in which one study dispute resolution advisory panel can make recommendations with respect to disputes involving different, but related resources, such as fisheries and aquatic resources?

¶ 184 Should participants be permitted to make new information-gathering or study requests, as opposed to requests for modification of, or disputes concerning the implementation of, existing studies, following the updated status report?

¶ 185 Should the rules require parties to file written comments on the potential applicant's initial and updated status reports prior to the required meeting?

¶ 187 (a) After the updated status report, should a draft license application be

[299] HLRTC members are drawn from the memberships of the American Public Power Association, Edison Electric Institute, and National Hydropower Association.

circulated for comment, or would it be preferable for the participants to continue informally working on resolution of outstanding issues?

(b) If a draft license application is required, should it be required to track the contents of the final license application, or would it be preferable to require it to include only a revised Exhibit E, and/or any other materials?

¶ 190 Should Federal and state agencies be required to provide preliminary recommendations, terms and conditions, or prescriptions following the updated status report if the Commission determines that all necessary information required by the study plan is already in the record?

¶ 191 If Federal and state agencies are required to provide preliminary recommendations, terms and conditions, or prescriptions following the updated status report, how can the Commission ensure that they have an adequate opportunity to consider public comment on their proposed terms and conditions if such an approach were adopted, and how can such an approach best be accommodated where the resource agencies are cooperating agencies for development of the NEPA document?

¶ 198 (a) Which process steps in the proposed integrated process may require adjustment?

(b) Which time frames, if any, should be specified in the regulations for purposes of guiding the development of a process plan and schedule (including studies), and which may not be appropriate for specification in the regulations, but rather should be developed entirely in the context of case-specific facts?

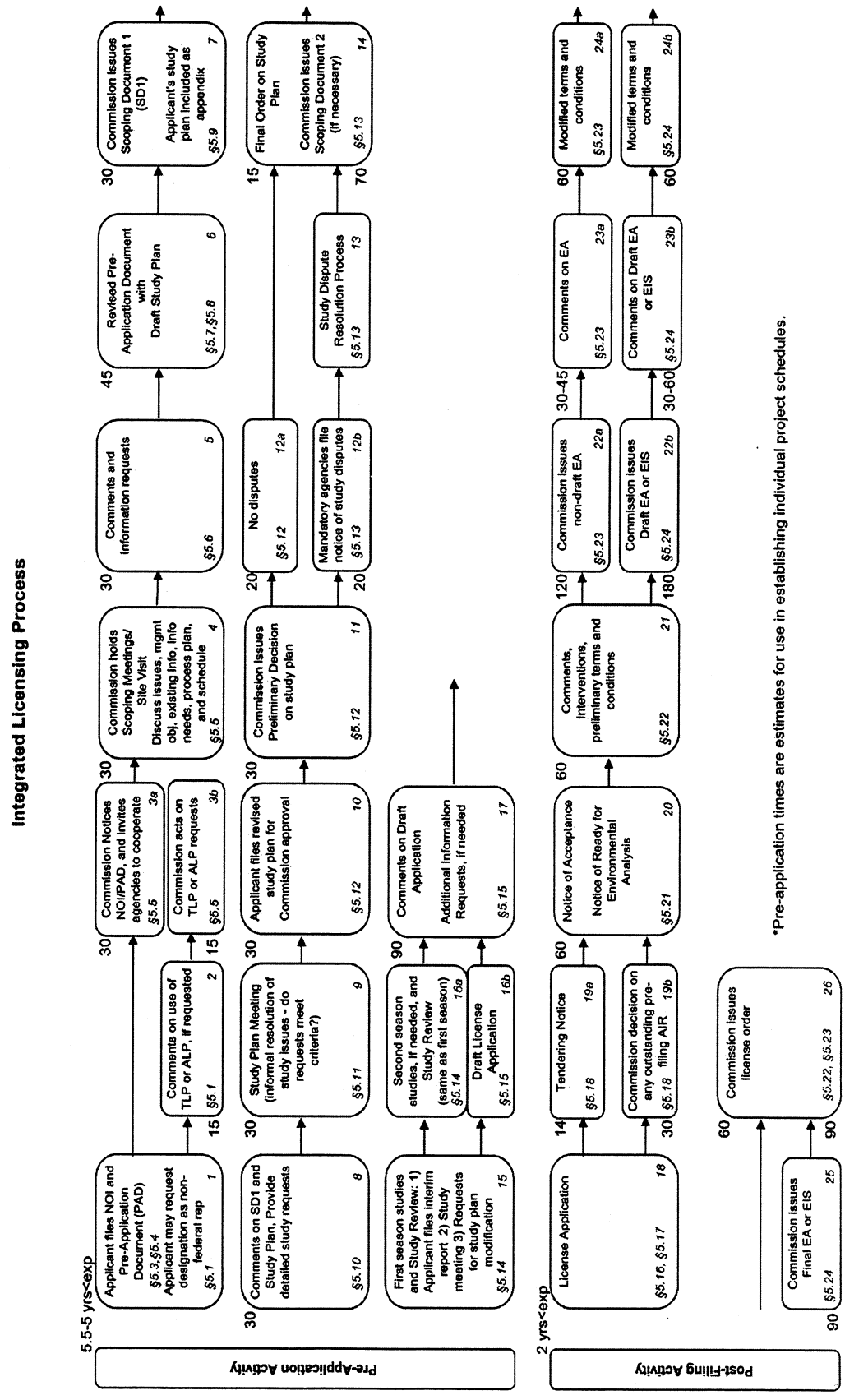
¶ 207 Are there circumstances under which binding study dispute resolution could be conducted in the ALP in a manner that safeguards the collaborative process?

¶ 211 What approaches to streamlining the licensing process for small projects other than non-consensual waiver of filing requirements may be viable that also protect the interests of stakeholders other than the license applicant?

¶ 212 Should the Commission amend its regulations to permit license applicants to file draft applicant-prepared environmental analyses with license applications prepared using the traditional process, in light of the proposed modifications to that project?

¶ 223 Should project boundaries be required for all licenses and exemptions?

Appendix C



[FR Doc. 03–6388 Filed 3–20–03; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Friday,
March 21, 2003

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–12]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Albert F. Lowas, Jr., Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 22209–2802; (703) 696–5501; *DOT:* Mr. Rugene Spruill, Project Manager, DOT Headquarters Project Team, Department of Transportation, 400 7th Street, SW, Room 10314, Washington, DC 20590; (202) 366–4246; *Energy:* Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, MS5512, Washington, DC 20240; (202) 219–0728; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 13, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 3/21/03

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 6165
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200230007
Status: Unutilized
Comment: 15970 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 6173
Elmendorf AFB
Elmendorf Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200230008
Status: Unutilized
Comment: 16290 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 7525
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200230009
Status: Unutilized
Comment: 26,226 sq. ft., need rehab, possible asbestos/lead paint, most recent use—dormitory, off-site use only

Arkansas

Post Antenna Tower Site
1.5 west of USHwy 165
Gillette Co: AR 72055–
Landholding Agency: GSA
Property Number: 54200230008
Status: Surplus

Comment: radio repeater tower, presence of asbestos/lead paint, on 2.06 acres GSA Number: 7–D–AR–563

Joy Antenna Tower Site
Range 9 West
Searcy Co: White AR 72143–
Landholding Agency: GSA
Property Number: 54200230011
Status: Surplus
Comment: radio repeater tower, presence of asbestos/lead paint, subject to existing easements, on 1.75 acres GSA Number: 7–D–AR–564

Jamestown Antenna Tower Site
Jamestown Co: Independence AR 7250–
Landholding Agency: GSA
Property Number: 54200240001
Status: Surplus
Comment: radio repeater tower on 1.05 acres, subject to existing easements GSA Number: 7–D–AR–0562

Ash Flat Comm. Site
Gillette Co: AR 72055–
Landholding Agency: GSA
Property Number: 54200240002
Status: Surplus
Comment: radio repeater tower on 2.06 acres, subject to existing easements GSA Number: 7–D–AR–0565

Idaho

Bldg. CF603
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200020004
Status: Excess
Comment: 15,005 sq ft. cinder block, presence of asbestos/lead paint, major rehab, off-site use only

Illinois

Soc. Sec. Admin. Ofc.
525 18th Street
Rock Island Co: IL
Landholding Agency: GSA
Property Number: 54200310017
Status: Excess
Comment: 5800 sq. ft., most recent use—office
GSA Number: 1–G–IL–730

Indiana

Soc. Sec. Admin. Ofc.
327 West Marion
Elkhart Co: IN
Landholding Agency: GSA
Property Number: 54200310016
Status: Excess
Comment: 6600 sq. ft., most recent use—office
GSA Number: 1–G–IN–596

Michigan

Detroit Job Corp Center 10401 E. Jefferson
1265 St. Clair
Detroit Co: Wayne MI
Landholding Agency: GSA
Property Number: 54200230012
Status: Surplus
Comment: Parcel One = 80,590 sq. ft. bldg., needs repair, presence of asbestos; Parcel Two = 5140 sq. ft. bldg.
GSA Number: 2–L–MI–757

Missouri

Bldgs. 90A/B, 91A/B, 92A/B
Jefferson Barracks Housing
St. Louis Co: MO 63125–
Landholding Agency: Air Force
Property Number: 18200220002
Status: Excess
Comment: 6450 sq. ft., needs repair, includes 2 acres

Columbia Federal Ofc. Bldg.
608 Cherry Street
Columbia Co: Boone MO 65201–7712
Landholding Agency: GSA
Property Number: 54200230016
Status: Surplus
Comment: 30,609 sq. ft., needs rehab, most recent use—office
GSA Number : 7–C–MO–633

Old Custom House/P.O.
815 Olive Street
St. Louis Co: MO 63101–
Landholding Agency: GSA
Property Number: 54200240016
Status: Surplus
Comment: 6-story office building, restrictive use due to Historical Landmark status
GSA Number: 7–G–MO–074

New York

Lockport Comm. Facility
Shawnee Road
Lockport Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200040004
Status: Excess
Comment: 2 concrete block bldgs., (415 & 2929 sq. ft.) on 7.68 acres

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

Virginia

Federal Building
103 South Main Street
Farmville Co: Prince Edward VA 23901–
Landholding Agency: GSA
Property Number: 54200310020
Status: Excess
Comment: 7686 sq. ft., historic preservation covenants, most recent use—office
GSA Number : 4–G–VA–732

Land (by State)

Florida

Homestead Communications Annex
Homestead Co: Dare FL 33033–
Landholding Agency: Air Force
Property Number: 18200210015
Status: Excess
Comment: 20 acres w/concrete bldg., consist of wetlands/100 year floodplain, most recent use—high frequency regional broadcasting system

Kentucky

Tract 832
Cloverport Access Site 2
Cloverport Co: Breckinridge KY
Landholding Agency: GSA
Property Number: 54200310018
Status: Excess
Comment: approx. 15.70 acres including parking area & boat ramp, chance of flooding, potential lease restriction
GSA Number: 4–D–KY–539D

Missouri

Improved Land
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: MO 63120–1798
Landholding AGENCY: GSA
Property Number: 54200110007
Status: Surplus
Comment: 21 acres w/2 large bldgs. and numerous small bldgs. situated on 13 acres, 5 acres = parking lot and streets, presence of asbestos/lead paint, clean-up required to state regulator standards
GSA Number: 000000

Montana

Canyon Ferry Reservoir
Portion
Tracts FS–1, FS–2, FS–3, FS–4
Lewis & Clark Co: MT 59602–
Landholding Agency: GSA
Property Number: 54200240010
Status: Surplus
Comment: 8.47 acres, subject to existing easements, buffer zone GSA Number: 7–I–MT–0409

Nebraska

Hastings Radar Bomb Scoring
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199810027
Status: Unutilized
Comment: 11 acres

South Dakota

S. Nike Ed. Annex Land
Ellsworth AFB
Pennington Co: SD 57706–
Landholding Agency: Air Force
Property Number: 18200220010
Status: Unutilized
Comment: 7 acres w/five foundations from demolished bldgs. remain on site; with a road and a parking lot

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Coosa River Storage Annex
Anniston Army Depot
Talladega Co: q AL 35161–
Landholding Agency: GSA
Property Number: 54200230001
Status: Excess
Comment: 136 storage igloos, two cemeteries, sentry bldg., ofc. bldg., admin. bldg. in poor condition on 2834 acres
GSA Number: 4–J–AL–541

California

Merced Federal Bldg.
415 W. 18th St.
Merced Co: CA 95340–
Landholding Agency: GSA
Property Number: 54200220012
Status: Surplus
Comment: 15,492 sq. ft., presence of asbestos/lead paint, Historic Preservation Covenant will be included in deed, relocation issue

GSA Number: 9–G–CA–1567

Colorado

Bldg. 100
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230001
Status: Excess
Comment: 7760 sq. ft., most recent use—admin/electronic equip. maintenance

Bldg. 101
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230002
Status: Excess
Comment: 336 sq. ft., most recent use—storage

Bldg. 102
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230003
Status: Excess
Comment: 1056 sq. ft., most recent use—storage

Bldg. 103
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230004
Status: Excess
Comment: 784 sq. ft., most recent use—storage

Bldg. 104
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230005
Status: Excess
Comment: 312 sq. ft., most recent use—storage

Bldg. 106
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230006
Status: Excess
Comment: 100 sq. ft., most recent use—storage

Idaho

Bldg. 224
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840008
Status: Unutilized
Comment: 1890 sq. ft., no plumbing facilities, possible asbestos/ lead paint, most recent use—office

Bldg. CFA–613
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199630001
Status: Unutilized
Comment: 1219 sq. ft., most recent use—sleeping quarters, presence of asbestos, off-site use only

Illinois

LaSalle Comm. Tower Site
1600 NE 8th St.
Richland Co: LaSalle IL 61370–
Landholding Agency: GSA
Property Number: 54200020019
Status: Excess
Comment: 120 sq. ft. cinder block bldg. and a 300' tower
GSA Number: 1–D–IL–724

Iowa

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process

Maryland

29 Bldgs.
Walter Reed Army Medical Center
Forest Glen Annex, Linden Lane
Silver Spring Co: Montgomery MD 20910–1246
Location: 24 bldgs. are in poor condition, presence of asbestos/lead paint, most recent use—hospital annex, lab, office
Landholding Agency: GSA
Property Number: 54200130012
Status: Excess
Comment: Historic Preservation Covenants will impact reuse, property will not be parcelized for disposal, high cost associated w/maintenance, estimated cost to renovate $17 million
GSA Number: 4–D–MD–558-B

Massachusetts

Aircraft Hanger
Hanscom Air Force Base
Concord Co: MA –
Landholding Agency: GSA
Property Number: 54200140007
Status: Excess
Comment: 40,000 sq. ft., off-site use only, relocating property may not be feasible
GSA Number: 1–D–MA–0857679

Michigan

Pontiac Federal Bldg.
142 Auburn Ave.
Pontiac Co: Oakland MI
Landholding Agency: GSA
Property Number: 54200220005
Status: Surplus
Comment: 11,910 sq. ft., most recent use—office
GSA Number: 1–G–MI–809

Minnesota

GAP Filler Radar Site
St. Paul Co: Rice MN 55101–
Landholding Agency: GSA
Property Number: 54199910009
Status: Excess
Comment: 1266 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage, zoning requirements, preparations for a Phase I study underway, possible underground storage tank
GSA Number: 1–GR(1)–MN–475

MG Clement Trott Mem. USARC
Walker Co: Cass MN 56484–
Landholding Agency: GSA
Property Number: 54199930003
Status: Excess
Comment: 4320 sq. ft. training center and 1316 sq. ft. vehicle maintenance shop, presence of environmental conditions
GSA Number: 1–D–MN–575

Mississippi

Post Office/Courthouse
820 Crawford Street
Vicksburg Co: Warren MS 39180–
Landholding Agency: GSA
Property Number: 54200240013
Status: Surplus
Comment: 14,000 sq. ft., needs rehab, presence of asbestos, historic preservation covenant required, portion occupied by Federal tenants
GSA Number: 4–G–MS–0559

Missouri

Hardesty Federal Complex
607 Hardesty Avenue
Kansas City Co: Jackson MO 64124–3032
Landholding Agency: GSA
Property Number: 54199940001
Status: Excess
Comment: 7 warehouses and support buildings (540 to 216,000 sq. ft.) on 17.47 acres, major rehab, most recent use—storage/office, utilities easement
GSA Number: 7–G–MO–637

New Jersey

Chapel Hill Front Range Light
N. Lenard Ave.
Middletown Co: Monmouth NJ
Landholding Agency: GSA
Property Number: 54200240011
Status: Excess
Comment: steel tower on 0.40 acres, possible flood hazard, wetlands & possible endangered species
GSA Number: 1–U–NJ–0627

New York

Bldg. 1225
Verona Text Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220014
Status: Unutilized
Comment: 3865 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1226
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220015
Status: Unutilized
Comment: 7500 sq. ft., most recent use—storage

Bldg. 1227
Verona Text Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220016
Status: Unutilized
Comment: 1152 sq. ft., presence of asbestos/lead paint, most recent use—power station

Bldg. 1231
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220017
Status: Unutilized
Comment: 3865 sq. ft., presence of asbestos/lead paint/volatile organic compounds,

access requirements, most recent use—research lab

Bldg. 1233
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220018
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—power station

Bldgs. 1235, 1239
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220019
Status: Unutilized
Comment: 144/825 sq. ft., need repairs, presence of lead paint, most recent use—electric switch station

Bldg. 1241
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220020
Status: Unutilized
Comment: 159 sq. ft., presence of lead paint, most recent use—sewage pump station

Bldg. 1243
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220021
Status: Unutilized
Comment: 25 sq. ft., most recent use—waste treatment

Bldg. 1245
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220022
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1247
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220023
Status: Unutilized
Comment: 576 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—power station

Bldg. 1250 + land
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220024
Status: Unutilized
Comment: 11,766 sq. ft. offices/lab with 495 acres, presence of asbestos/lead paint/wetlands

Bldg. 1253
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220025
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—research lab

Bldg. 1255
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220026
Status: Unutilized
Comment: 576 sq. ft., needs repair, presence of lead paint/volatile organic compounds, access requirement, most recent use—power station

Bldg. 1261
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220027
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1263
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220028
Status: Unutilized
Comment: 576 sq. ft. needs repair, presence of lead paint, most recent use—power station

Bldgs. 1266, 1269
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220029
Status: Unutilized
Comment: 3730/3865 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1271
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220030
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Bldg. 1273
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220031
Status: Unutilized
Comment: 87 sq. ft., presence of asbestos, most recent use—sewage pump station

Bldg. 1277
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220032
Status: Unutilized
Comment: 3865 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1279
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220033
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Bldg. 1285
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220034
Status: Unutilized
Comment: 4690 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1287
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220035
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Social Sec. Admin. Bldg.
517 N. Barry St.
Olean Co: NY 10278–0004
Landholding Agency: GSA
Property Number: 54200230009
Status: Excess
Comment: 9174 sq. ft., poor condition, most recent use—office
GSA Number: 1–G–NY–0895

Army Reserve Center
205 Oak Street
Batavia Co: NY 14020–
Landholding Agency: GSA
Property Number: 54200240004
Status: Excess
Comment: 9695 sq. ft., presence of asbestos/lead paint, most recent use—admin/storage, proximity of wetlands
GSA Number: 1–D–NY–890

North Carolina

Tarheel Army Missile Plant
Burlington Co: Alamance NC 27215–
Landholding Agency: GSA
Property Number: 54199820002
Status: Excess
Comment: 31 bldgs., presence of asbestos, most recent use—admin., warehouse, production space and 10.04 acres parking area, contamination at site—environmental clean up in process
GSA Number: 4–D–NC–593

Vehicle Maint. Facility
310 New Bern Ave.
Raleigh Co: Wake NC 27601–
Landholding Agency: GSA
Property Number: 54200020012
Status: Excess
Comment: 10,455 sq. ft., most recent use—maintenance garage
GSA Number: NC076AB

Pennsylvania

Bldg. 201
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240014
Status: Excess
Comment: 310 sq. ft., most recent use—storage

Bldg. 203
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240015
Status: Excess
Comment: 4163 sq. ft., most recent use—vehicle maint. shop

Bldg. 208

Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240016
Status: Excess
Comment: 144 sq. ft., most recent use—storage

Bldg. 210
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240017
Status: Excess
Comment: 263 sq. ft., most recent use—storage

Bldg. 211
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240018
Status: Excess
Comment: 1731 sq. ft., most recent use—office

Bristol Social Security Bldg.
1776 Farragut St.
Bristol Co: Bucks PA 19007–
Landholding Agency: GSA
Property Number: 54200230002
Status: Surplus
Comment: 7569 sq. ft., most recent use—office
GSA Number: 4–G–PA–792

Puerto Rico

7.5 Naval Reservation
Munoz Rivera Ave.
San Juan Co: PR
Landholding Agency: GSA
Property Number: 54200240012
Status: Excess
Comment: multi-use structures including admin. and residential, presence of asbestos/lead paint, exhibits historical and archeological significance
GSA Number: 1–N–PR–497

Tennessee

3 Facilities, Guard Posts
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930011
Status: Surplus
Comment:
48–64 sq. ft., most recent use—access control, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

4 Bldgs.
Volunteer Army Ammunition Plant
Railroad System Facilities
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930012
Status: Surplus
Comment: 144–2,420 sq. ft., most recent use—storage/rail weighing facilities/dock, potential use restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

200 Bunkers
Volunteer Army Ammunition Plant
Storage Magazines
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930014
Status: Surplus
Comment: approx. 200 concrete bunkers covering a land area of approx. 4000 acres, most recent use—storage/buffer area, potential use restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

Bldg. 232
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930020
Status: Surplus
Comment: 10,000 sq. ft., most recent use—office, presence of asbestos, approx. 5 acres associated w/bldg., potential use restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

2 Laboratories
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930021
Status: Surplus
Comment: 2000–12,000 sq. ft., potential use/lease restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

3 Facilities
Volunteer Army Ammunition Plant
Water Distribution Facilities
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930022
Status: Surplus
Comment: 256–15,204 sq. ft., 35.86 acres associated w/bldgs., most recent use—water distribution system, potential use/lease restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

Federal Bldg.
118 East Locust Street
Lafayette Co: Macon TN 37083–
Landholding Agency: GSA
Property Number: 54200220010
Status: Excess
Comment: 12,605 sq. ft., most recent use—office, portion occupied by U.S. Postal Service
GSA Number: 4–G–TN–656

Wisconsin

Wausau Federal Building
317 First Street
Wausau Co: Marathon WI 54401–
Landholding Agency: GSA
Property Number: 54199820016
Status: Excess
Comment: 30,500 sq. ft., presence of asbestos, eligible for listing on the Natl Register of Historic Places, most recent use—office
GSA Number: 1–G–WI–593

Land (by State)

Hawaii

Parcels 9, 2, 4
Loran Station Upolu Point
Hawi Co: Hawaii HI
Location: Resubmitted to **Federal Register** for publication
Landholding Agency: GSA
Property Number: 54200220002
Status: Surplus
Comment: parcel 9 = 6.242 acres/encumbered by utility and road access easements, parcel 2 = 1.007 acres; parcel 4 = 5.239 acres
GSA Number: 9–U–HI–0572

New Jersey

Belle Mead Depot
Rt. 206/Mountain View Rd.
Hillsborough Co: Somerset NJ 08502–
Landholding Agency: GSA
Property Number: 54200210014
Status: Excess
Comment: approx. 400 acres, property will not be subdivided, contaminants of concern present, lease restriction on 7 acres, 44 miles of railroad track, remediation activity, potential restriction of property f
GSA Number: 1–G–NJ–0642

Puerto Rico

Bahia Rear Range Light
Ocean Drive
Catano Co: PR 00632–
Landholding Agency: GSA
Property Number: 54199940003
Status: Excess
Comment: 0.167 w/skeletal tower, fenced, aid to navigation
GSA Number: 1–T–PR–508

South Dakota

Tract 133
Ellsworth AFB
Box Elder Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18200310004
Status: Unutilized
Comment: 53.23 acres

Tract 67
Ellsworth AFB
Box Elder Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
Comment: 121 acres, bentonite layer in soil, causes movement

Tennessee

1500 Acres
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930015
Status: Surplus
Comment: scattered throughout facility, most recent use—buffer area, steep topography, potential use restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

Suitable/To Be Excessed

Buildings (by State)

New York

Bldg. 1
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530048
Status: Excess
Comment: 4955 sq. ft., 2 story concrete block, needs rehab, most recent use—administration

Bldg. 2
Hancock Field

Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530049
Status: Excess
Comment: 1476 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 6
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530050
Status: Excess
Comment: 2466 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 11
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530051
Status: Excess
Comment: 1750 sq. ft., 1 story wood frame, needs rehab, most recent use—storage

Bldg. 8
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530052
Status: Excess
Comment: 1812 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop communications

Bldg. 14
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530053
Status: Excess
Comment: 156 sq. ft., 1 story wood frame, most recent use—vehicle fuel station

Bldg. 30
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530054
Status: Excess
Comment: 3649 sq. ft., 1 story, needs rehab, most recent use—assembly hall

Bldg. 31
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530055
Status: Excess
Comment: 8252 sq. ft., 1 story concrete block, most recent use—storage

Bldg. 32
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530056
Status: Excess
Comment: 1627 sq. ft., 1 story concrete block, most recent use—storage

South Carolina

5 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 101 Vector Ave., 112, 114, 116, 118 Intercept Ave.
Landholding Agency: Air Force
Property Number: 18199830035
Status: Unutilized
Comment: 1433 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 102 Vector Ave.
Landholding Agency: Air Force
Property Number: 18199830036
Status: Unutilized
Comment: 1545 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 103 Vector Ave.
Landholding Agency: Air Force
Property Number: 18199830037
Status: Unutilized
Comment: 1445 sq. ft. + 346 sq. ft. carport, lead base paint/exterior most recent use—residential

18 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 104–107 Vector Ave., 108–111, 113, 115, 117, 119 Intercept Ave., 120–122 Radar Ave.
Landholding Agency: Air Force
Property Number: 18199830038
Status: Unutilized
Comment: 1265 sq. ft. + 353 sq. ft. carport, lead base paint/exterior most recent use—residential

Land (by State)

New York

14.90 Acres
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530057
Status: Excess
Comment: Fenced in compound, most recent use—Air Natl. Guard Communication & Electronics Group

Unsuitable Properties

Buildings (by State)

Alabama

Sand Island Light House
Gulf of Mexico
Mobile AL
Landholding Agency: GSA
Property Number: 54199610001
Status: Excess
Reason: Inaccessible
GSA Number : 4–U–AL–763

Alaska

Bldg. 15532
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200220001
Status: Unutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 8354
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200240001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11827
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200240002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Fuel Tank Facility
USCG LORAN Station
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200310008
Status: Unutilized
Reason: Extensive deterioration

Arizona

Patrol Station
S. of U.S. Hwy 85
Gila Bend Co: AZ
Landholding Agency: GSA
Property Number: 54200230006
Status: Excess
Reason: Within airport runway clear zone
GSA Number : 9–J–AZ–821

Arkansas

Antenna Tower Site
FAA
Pine Bluff Co: Jefferson AR 71601–
Landholding Agency: GSA
Property Number: 54200210015
Status: Surplus
Reason: Secured Area
GSA Number : 7–D–AR–0558–2

California

Bldg. 30101
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210019
Status: Unutilized
Reason: Secured Area
Bldgs. 30131, 30709
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210020
Status: Unutilized
Reason: Secured Area
Bldgs. 30137, 30701
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210021
Status: Unutilized
Reason: Secured Area
Bldg. 30235
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210022
Status: Unutilized
Reason: Secured Area
Bldgs. 30238, 30446
Vandenberg AFB
Vandenberg Co: Santa Barbara CA –
Landholding Agency: Air Force
Property Number: 18200210023
Status: Unutilized
Reason: Secured Area
Bldgs. 30239, 30444
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210024
Status: Unutilized
Reason: Secured Area

Bldgs. 30306, 30335, 30782
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210025
Status: Unutilized
Reason: Secured Area

Bldgs. 30339, 30340, 30341
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210026
Status: Unutilized
Reason: Secured Area

Bldg. 30447
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210027
Status: Unutilized
Reason: Secured Area

Bldg. 30524
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210028
Status: Unutilized
Reason: Secured Area

Bldg. 30647
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210029
Status: Unutilized
Reason: Secured Area

Bldgs. 30710, 30717
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210030
Status: Unutilized
Reason: Secured Area

Bldgs. 30718, 30607
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210031
Status: Unutilized
Reason: Secured Area

Bldgs. 30722, 30735
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210032
Status: Unutilized
Reason: Secured Area

Bldgs. 30775, 30777
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210033
Status: Unutilized
Reason: Secured Area

Bldgs. 30830, 30837
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210034
Status: Unutilized
Reason: Secured Area

Bldgs. 30839, 30844, 30854
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210035
Status: Unutilized
Reason: Secured Area

Bldg. 2413
Edwards Air Force Base
Edwards AFB Co: Kern CA 93524–
Landholding Agency: Air Force
Property Number: 18200310001
Status: Unutilized
Reason: Secured Area

Bldg. 2418
Edwards Air Force Base
Edwards AFB Co: Kern CA 93524–
Landholding Agency: Air Force
Property Number: 18200310002
Status: Unutilized
Reason: Secured Area

Bldgs. M03, MO14, MO17
Sandia National Lab
Livermore Co: Alameda CA 94550–
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess
Reason: Extensive deterioration

Bldg. 1232
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310036
Status: Excess
Reason: Extensive deterioration

Bldg. 2297
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310037
Status: Excess
Reason: Extensive deterioration

Bldg. 25037
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310038
Status: Excess
Reason: Extensive deterioration

Bldg. 25168
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310039
Status: Excess
Reason: Extensive deterioration

Bldg. 31339
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310040
Status: Excess
Reason: Extensive deterioration

Bldg. 31350
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310041
Status: Excess
Reason: Extensive deterioration

Bldg. 31628
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310042
Status: Excess
Reason: Extensive deterioration

Bldg. 31629
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310043
Status: Excess
Reason: Extensive deterioration

Bldg. 31753
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310044
Status: Excess
Reason: Extensive deterioration

Bldg. 31754
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310045
Status: Excess
Reason: Extensive deterioration

Bldg. 31764
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310046
Status: Unutilized
Reason: Extensive deterioration

Bldg. 52540
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310047
Status: Excess
Reason: Extensive deterioration

Bldg. 220178
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310048
Status: Excess
Reason: Extensive deterioration

Bldg. 232
Naval Air Facility
El Centro Co: CA 92243–
Landholding Agency: Navy
Property Number: 77200310055
Status: Unutilized
Reason: Extensive deterioration

Colorado

Bldg. 105
Peterson AFB
Colorado Springs Co: El Paso CO 80914–
Landholding Agency: Air Force
Property Number: 18200310003
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 34
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540001
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 35
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540002
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 36
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–

Landholding Agency: Energy
Property Number: 41199540003
Status: Underutilized
Reasons: Contamination; Secured Area
Bldg. 2
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610039
Status: Unutilized
Reasons: Contamination; Secured Area
Bldg. 7
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610040
Status: Unutilized
Reasons: Contamination; Secured Area
Bldg. 31-A
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610041
Status: Unutilized
Reasons: Contamination; Secured Area
Bldg. 33
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610042
Status: Unutilized
Reasons: Contamination; Secured Area
Bldg. 727
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 729
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 779
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 780
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 780A
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 780B
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 782
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 783
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 784(A–D)
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910009
Status: Unutilized
Reasons:
Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 785
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 786
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 787(A–D)
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 875
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 880
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 886
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 308A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 788
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910017
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 888
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 714 A/B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930021
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 717
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930022
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 770
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930023
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 771
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930024
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 771B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930025
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 771C
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930026

Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 772–772A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930027
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 773
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 774
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 776
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–Landholding Agency: Energy
Property Number: 41200010001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 777
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 778
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 712–712A
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 713–713A
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 771 TUN
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Structure 776A–781
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 111, 111B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200030001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 125
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 333
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 762
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area

Bldg. 762A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 792
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 792A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 124, 129
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 371, 374, 374A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 376–378, 381
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 441–443, 452
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 557, 559
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 561, 562
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220007
Status: Excess
Reasons:
Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 564, 566/A, 569
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 662, 663
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 666, 681
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 701, 705–708
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 714, 715, 718
Rocky Flats Env. Tech. Site

Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area

Bldgs. 731, 732
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 750, 763–765
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 778, 790
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 850, 864–865
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 869, 879
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220017
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 881, 881F, 881H
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 883–885, 887
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220019
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 891
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 906, 991, 995
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reason: Secured Area

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reason: Secured Area

Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 1345
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 24451
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 55122
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

U.S. Customs House
1700 Spangler Boulevard
Hollywood Co: Broward FL 33316–
Landholding Agency: GSA
Property Number: 54200140012
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
GSA Number: 4–G–FL–1173

U.S. Classic Courthouse
601 N. Florida Ave
Tampa Co: FL 33602–
Landholding Agency: GSA
Property Number: 54200240018
Status: Excess
Reason: Contamination—toxic mold
GSA Number: 4–G–FL–1208–1A

Georgia

Bldg. 14
Naval Air Station
Marietta Co: Cobb GA 30060–
Landholding Agency: Navy
Property Number: 77200310049
Status: Unutilized
Reasons: Within airport runway clear zone; Secured AreaExtensive deterioration

Bldg. 15
Naval Air Station
Marietta Co: Cobb GA 30060–
Landholding Agency: Navy
Property Number: 77200310050
Status: Unutilized
Reasons: Within airport runway clear zone; Secured Area; Extensive deterioration

Bldg. 109
Naval Air Station
Marietta Co: Cobb GA 30060–
Landholding Agency: Navy
Property Number: 77200310051
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Hawaii

13 Administrative Facilities
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200230019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

7 Bunkers
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200230020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

64 Storage Igloos
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200230021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

38 Quarters
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200230022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

108 Misc. Facilities
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200230023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

5 Outer Island Bldgs.
Johnston Atoll Airfield

Honolulu Co: HI

Landholding Agency: Air Force
Property Number: 18200230024
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

37 Shops
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200230025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

46 Warehouses
Johnston Atoll Airfield
Honolulu Co: HI
Landholding Agency: Air Force
Property Number: 18200230026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone

Bldg. 348
Pacific Missile Range Facility
Kekaha Co: Kauai HI 96752–
Landholding Agency: Navy
Property Number: 77200310052
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1G
Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–5350
Landholding Agency: Navy
Property Number: 77200310056
Status: Excess
Reason: Secured Area

Bldg. 27
Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–5350
Landholding Agency: Navy
Property Number: 77200310057
Status: Excess
Reasons: Secured Area; Extensive deterioration

Idaho

Bldg. 1328
Mountain Home AFB
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18200240003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. PBF–621
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610001
Status: Unutilized
Reason: Secured Area

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reason: Secured Area

Bldg. CPP–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610004
Status: Unutilized
Reason: Secured Area

Bldg. CPP–650
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610005
Status: Unutilized
Reason: Secured Area

Bldg. CPP–608
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610006
Status: Unutilized
Reason: Secured Area

Bldg. TAN–660
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610007
Status: Unutilized
Reason: Secured Area

Bldg. TAN–636
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610008
Status: Unutilized
Reason: Secured Area

Bldg. TAN–609
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610009
Status: Unutilized
Reason: Secured Area

Bldg. TAN–670
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610010
Status: Unutilized
Reason: Secured Area

Bldg. TAN–661
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610011
Status: Unutilized
Reason: Secured Area

Bldg. TAN–657
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610012
Status: Unutilized
Reason: Secured Area

Bldg. TRA–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reason: Secured Area

Bldg. TAN–637
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610014
Status: Unutilized
Reason: Secured Area

Bldg. TAN–635
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610015
Status: Unutilized
Reason: Secured Area

Bldg. TAN–638
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610016
Status: Unutilized
Reason: Secured Area

Bldg. TAN–651
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610017
Status: Unutilized
Reason: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reason: Secured Area

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reason: Secured Area

Bldg. PBF–616
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610020
Status: Unutilized
Reason: Secured Area

Bldg. PBF–617
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610021
Status: Unutilized
Reason: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reason: Secured Area

Bldg. PBF–624
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610023
Status: Unutilized
Reason: Secured Area

Bldg. PBF–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610024
Status: Unutilized
Reason: Secured Area

Bldg. PBF–629
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610025
Status: Unutilized
Reason: Secured Area

Bldg. PBF–604

Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610026
Status: Unutilized
Reason: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reason: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reason: Secured Area

TAN 602, 631, 663, 702, 724
Idaho Natl Engineering & Environmental Lab
Test Area North
Scovile Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199830002
Status: Excess
Reasons: Within 2000 ft., of flammable or explosive material; Secured Area; Extensive deterioration

8 Bldgs.
Idaho Natl Engineering & Environmental Lab
Test Reactor North
Scovile Co: Butte ID 83415–
Location: TRA 643, 644, 655, 660, 704–706, 755
Landholding Agency: Energy
Property Number: 41199830003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Illinois

Navy Family Housing 18-units
Hanna City Co: Peoria IL 61536–
Landholding Agency: GSA
Property Number: 54199940018
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 1–N–IL–723

Kansas

Sunflower AAP
DeSoto Co: Johnson KS 66018–
Landholding Agency: GSA
Property Number: 54199830010
Status: Excess
Reason: Extensive deterioration
GSA Number: 7–D–KS–0581

Louisiana

Weeks Island Facility
New Iberia Co: Iberia Parish LA 70560–
Landholding Agency: Energy
Property Number: 41199610038
Status: Underutilized
Reason: Secured Area

Maine

Sound Signal Station
Manana Island
Manana Island Co: ME
Landholding Agency: GSA
Property Number: 54200210008
Status: Excess
Reason: Inaccessible
GSA Number: 1–U–ME–646B

Maryland

Stillpond Station
Coast Guard Station
Stillpond Neck Road
Worton Co: Kent MD 21678–
Landholding Agency: GSA
Property Number: 54200230015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–U–MD–607

Massachusetts

Wayland Army Natl Guard Fac.
Oxbow Road
Wayland Co: MA 01778–
Landholding Agency: GSA
Property Number: 54200240007
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–D–MA–0725

USCG Boat House
Point Allerton
Windmill Point Co: Hull MA
Landholding Agency: GSA
Property Number: 54200310019
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–U–MA–863

Michigan

Bldg. 550
Selfridge Outer Marker Site
Selfridge ANGB Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18200230017
Status: Unutilized
Reason: Extensive deterioration

Facilities 90004, 911146
Selfridge Outer Marker Site
Selfridge ANGB Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18200230018
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230027
Status: Unutilized
Reason: Secured Area

Bldgs. 10, 15
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230028
Status: Unutilized
Reason: Secured Area

Bldgs. 31, 33, 38
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230029
Status: Unutilized
Reason: Secured Area

Bldg. 44
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230030
Status: Unutilized
Reason: Secured Area

Bldg. 53
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230031
Status: Unutilized
Reason: Secured Area

Bldg. 219
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230032
Status: Unutilized
Reason: Secured Area

Bldgs. 302, 304, 305
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230033
Status: Unutilized
Reason: Secured Area

Bldg. 321
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230034
Status: Unutilized
Reason: Secured Area

Bldgs. 330–333
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230035
Status: Unutilized
Reason: Secured Area

Bldgs. 402, 414
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230036
Status: Unutilized
Reason: Secured Area

Bldg. 4020
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230037
Status: Unutilized
Reason: Secured Area

Navy Housing
64 Barberry Drive
Springfield Co: Calhoun MI 49015–
Landholding Agency: GSA
Property Number: 54200020013
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–N–MI–795

Stroh Army Reserve Center
17825 Sherwood Ave.
Detroit Co: Wayne MI 00000–
Landholding Agency: GSA
Property Number: 54200040001
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–MI–798

Minnesota
Naval Ind. Rsv Ordnance Plant
Minneapolis Co: MN 55421–1498
Landholding Agency: GSA
Property Number: 54199930004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

GSA Number: 1–N–MN–570

Nike Battery Site, MS–40
Castle Rock Township
Farmington Co: Dakota MN 00000–
Landholding Agency: GSA
Property Number: 54200020004
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 1–I–MN–451–B
Parcel B
Twin Cities Army Ammunition Plant
Arden Hills Co: MN 55112–3938
Landholding Agency: GSA
Property Number: 54200240015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–MN–0578B

Montana

Bldg. 347
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200220011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 3064
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200220013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 547
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 769
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1084
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 2025
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240007
Status: Unutilized
Reason: Secured Area

Nevada

28 Facilities
Nevada Test Site
Mercury Co: Nye NV 89023–
Landholding Agency: Energy
Property Number: 41200310018
Status: Excess
Reasons: Contamination; Secured Area

6 Bldgs.
Dale Street Complex
300, 400, 500, 600, Block Bldg, Valve House
Boulder City Co: NV 89005–
Landholding Agency: GSA
Property Number: 54200020017
Status: Excess
Reason: Extensive deterioration
GSA Number: LC–00–01–RP

New Jersey
Holmdel Housing Site
Telegraph Hill Road
Holmdel Co: Monmouth NJ 07733–
Location: Redetermination based on additional information from landholding agency
Landholding Agency: GSA
Property Number: 54200040005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–N–NJ–622

30 Bldgs.
Camp Charles Wood
Ft. Monmouth Co: Eatontown NJ
Landholding Agency: GSA
Property Number: 54200120008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–NJ–470f

Former Auerbach Property
Appalachian Natl Scenic Trail
Glenwood Co: Sussex NJ 07701–
Landholding Agency: Interior
Property Number: 61200230001
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldg. 14170
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230010
Status: Unutilized
Reason: Secured Area

Bldg. 14240
Cannon AFB
Cannon AFB Co: NM
Landholding Agency: Air Force
Property Number: 18200230011
Status: Unutilized
Reason: Secured Area

Bldg. 14270
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230012
Status: Unutilized
Reason: Secured Area

Bldg. 14330
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230013
Status: Unutilized
Reason: Secured Area

Bldg. 14350
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230014
Status: Unutilized
Reason: Secured Area

Bldg. 14370
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230015
Status: Unutilized
Reason: Secured Area

Bldg. 14390
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230016
Status: Unutilized
Reason: Secured Area

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reason: Extensive deterioration

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105–
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 24, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 86, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 88, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–

Landholding Agency: Energy
Property Number: 41199810006
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 89, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810008
Status: Underutilized
Reason: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810012
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reason: Secured Area

Bldg. 212, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810014
Status: Unutilized
Reason: Secured Area

Bldg. 228, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810015
Status: Unutilized
Reason: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reason: Secured Area

Bldg. 63, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Extensive deterioration

Bldg. 515, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 518, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 519, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 520, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 18, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199840001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 31
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 4, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930004
Status: Unutilized
Reason: Secured Area

Bldg. 50, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930005
Status: Unutilized
Reason: Secured Area

Bldg. 88, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930006
Status: Unutilized
Reason: Secured Area

Bldg. 89, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930007
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940001
Status: Unutilized
Reason: Secured Area

Bldg. 57, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940002
Status: Unutilized
Reason: Secured Area

Bldg. 28, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940003
Status: Unutilized
Reason: Secured Area

Bldg. 38, TA–14
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 8, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940007
Status: Unutilized
Reason: Secured Area

Bldg. 141, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–

Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized
Reason: Secured Area

Bldg. 44, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 5, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 186, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940012
Status: Unutilized
Reasons:
Secured Area; Extensive deterioration

Bldg. 188, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 254, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 44, TA–36
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 45, TA–36
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940016
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 19, TA–40
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940017
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 43, TA–40
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940018
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 258, TA–46
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940019
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–2, Bldg. 1
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010008
Status: Unutilized
Reason: Secured Area

TA–2, Bldg. 44
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–3, Bldg. 208
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 1
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 3
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 5
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

TA–6, Bldg. 6
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010015
Status: Unutilized
Reason: Secured Area

TA–6, Bldg. 7
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010016
Status: Unutilized
Reason: Secured Area

TA–6, Bldg. 8
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010017
Status: Unutilized
Reasons: Secured Area Extensive deterioration

TA–6, Bldg. 9
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010018
Status: Unutilized
Reason: Secured Area

TA–14, Bldg. 5
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010019
Status: Unutilized
Reason: Secured Area

TA–21, Bldg. 150
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010020
Status: Unutilized
Reason: Secured Area

Bldg. 149, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010024
Status: Unutilized
Reason: Secured Area

Bldg. 312, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010025
Status: Unutilized
Reason: Secured Area

Bldg. 313, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010026
Status: Unutilized
Reason: Secured Area

Bldg. 314, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010027
Status: Unutilized
Reason: Secured Area

Bldg. 315, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010028

Status: Unutilized
Reason: Secured Area

Bldg. 1, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010029
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200010030
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 51, TA–9
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020002
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–14
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020003
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–3
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020009
Status: Unutilized
Reason: Secured Area

Bldg. 339, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020010
Status: Unutilized
Reason: Secured Area

Bldg. 340, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020011
Status: Unutilized
Reason: Secured Area

Bldg. 341, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020012
Status: Unutilized
Reason: Secured Area

Bldg. 342, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020013
Status: Unutilized
Reason: Secured Area

Bldg. 343, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020014
Status: Unutilized
Reason: Secured Area

Bldg. 345, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020015
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545—
Landholding Agency: Energy
Property Number: 41200020016
Status: Unutilized
Reason: Secured Area

Bldg. 48, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reason: Secured Area

Bldg. 125, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reason: Secured Area

Bldg. 162, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reason: Secured Area

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reason: Secured Area

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200040001
Status: Unutilized
Reason: Secured Area

Bldg. 152 TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200040002
Status: Unutilized
Reason: Secured Area

Bldg. 105, TA–3
Los Alamos Natl Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200120007
Status: Excess
Reason: Secured Area

Bldg. 452, TA–3
Los Alamos Natl Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200120008
Status: Excess
Reason: Secured Area

5 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 9927, 9970, 6730, 6731, 6555
Landholding Agency: Energy
Property Number: 41200210014
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 6725, 841, 884, 892, 893, 9800
Landholding Agency: Energy
Property Number: 41200210015
Status: Excess
Reason: Extensive deterioration

TA–53, Bldg. 61
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220023
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 63
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220024
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 65
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220025
Status: Unutilized
Reason: Extensive deterioration

Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220032
Status: Excess
Reason: Extensive deterioration

Bldg. B118
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–

Landholding Agency: Energy
Property Number: 41200220033
Status: Excess
Reason: Extensive deterioration

Bldg. B119
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220034
Status: Excess
Reason: Extensive deterioration

Bldg. 6721
Kirtland AFB
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200220042
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Kirtland Air Force Base
#852, 874, 9939A, 6536, 6636, 833A
Albuquerque Co: NM 87185–
Landholding Agency: Energy
Property Number: 41200230001
Status: Excess
Reason: Secured Area

Bldg. 805
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200240001
Status: Unutilized
Reason: Secured Area

Bldg. 8898
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200240002
Status: Unutilized
Reason: Secured Area

8 Bldgs., TA–16
Los Alamos National Lab
195, 220–226
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240003
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–11
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240004
Status: Unutilized
Reason: Secured Area

Bldg. 4, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240005
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240006
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240007
Status: Unutilized
Reason: Secured Area

Bldg. 53, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240008
Status: Unutilized
Reason: Secured Area

New York

6 UG Missile Silos
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 100
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 107
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 109
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 116
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220009
Status: Unutilized
Reason: Extensive deterioration

Middle Marker
Wind Shear Site
31st Ave & 75th St
Jackson Heights Co: Queens NY 11434–
Landholding Agency: GSA
Property Number: 54200210004
Status: Surplus
Reason: Extensive deterioration
GSA Number: 1–U–NY–889

Fed. Bldg. #2
850 Third Ave.
Brooklyn Co: NY 11232–
Landholding Agency: GSA
Property Number: 54200240005
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–G–NY–0872

Fed. Bldg. #2
850 Third Ave.
Brooklyn Co: NY 11232–
Landholding Agency: GSA
Property Number: 54200240005
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–G–NY–0872

Former Guardia Property
Appalachian Natl Scenic Trail
E. Fishkill Co: Dutchess NY 11370–
Landholding Agency: Interior
Property Number: 61200230002
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 77
Fernald Environmental Management Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199840003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 82A
Fernald Environmental Mgmt Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199910018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 16
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930016
Status: Unutilized
Reason: Secured Area

Bldg. 22B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 53A
Fernald Env. Mgmt. Project
Fernald Co: Hamilton OH 45013–9402
Landholding Agency: Energy
Property Number: 41200120009
Status: Excess
Reason: Secured Area

Bldg. 8G
Fernald Environmental Mgmt Project
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200210003
Status: Excess
Reason: Secured Area

Bldg. 8H
Fernald Environmental Mgmt Project
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200210004
Status: Excess
Reason: Secured Area

Bldg. 94A

Fernald Environmental Mgmt Project
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200210005
Status: Excess
Reason: Secured Area

Bldg. 11
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220026
Status: Excess
Reason: Secured Area

Bldg. 14A
Fernald Env. Mgmt. Proj
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220027
Status: Excess
Reason: Secured Area

Bldg. 15A
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220028
Status: Excess
Reason: Secured Area

Bldg. 15C
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220029
Status: Excess
Reason: Secured Area

Bldg. 20K
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220030
Status: Excess
Reason: Secured Area

Bldg. 53B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220031
Status: Excess
Reason: Secured Area

Pennsylvania

Z–Bldg.
Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122–0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reason: Extensive deterioration

Former Sunday Property
Appalachian Natl Scenic Trail
Boiling Springs Co: Cumberland PA 17007–
Landholding Agency: Interior
Property Number: 61200230003
Status: Unutilized
Reason: Extensive deterioration

Puerto Rico

Culebrita Island Lighthouse
Culebra Island Co: PR
Landholding Agency: GSA
Property Number: 54200210021
Status: Surplus
Reason: Inaccessible
GSA Number : 1–T–PR–509

Structure 1026
Bahia Salina Del Sur
East Vieques Co: PR–
Landholding Agency: Navy
Property Number: 77200310053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area; Extensive deterioration

Rhode Island

Facility 6
Quonset State Airport
N. Kingstown Co: RI 02852–7545
Landholding Agency: Air Force
Property Number: 18200240008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Facility 16
Quonset State Airport
N. Kingstown Co: RI 02852–7545
Landholding Agency: Air Force
Property Number: 18200240009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Tennessee

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199710002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199720001
Status: Excess
Reason: Extensive deterioration

Bldgs. 9714–3, 9714–4, 9983–AY
Y–12 Pistol Range
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199720004
Status: Unutilized
Reason: Secured Area

5 Bldgs.
K–724, K–725, K–1031, K–1131, K–1410
East Tennessee Technology Park
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199730001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9418–1
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9825
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810027
Status: Unutilized
Reason: Secured Area

Bldg. 3026
Oak Ridge Natl Lab
Oak Ridge Co: Roane TN 37831
Landholding Agency: Energy
Property Number: 41199830001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 3505
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199940020
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

9 Bldgs.
E. Tennessee Tech Park
Oak Ridge Co: Roane TN 37831–
Location: K–1001, K–1301, K–1302, K–1303, K–1404, K–1405–6, K–1407, K–1408A, K–1413
Landholding Agency: Energy
Property Number: 41200010023
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9723–16
National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200120010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

5 Bldgs.
Oak Ridge National Lab
#7811, 7819, 7833, 7852, 7860
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200130001
Status: Unutilized
Reasons: Contamination; Secured Area; Extensive deterioration

Bldg. 81–22
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9409–26
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9723–4
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9733–4
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

4 Bldgs.

Y–12 National Security Complex
#9929–1, 9823, 9827 & shed
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9949–1
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140006
Status: Unutilized
Reason: Secured Area

Bldg. 9949–31
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210001
Status: Unutilized
Reason: Secured Area

Bldg. SC–14
ORISE Scarboro Operations Site
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210002
Status: Excess
Reason: Secured Area

Bldg. 9723–18
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210006
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9728
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9404–03
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 39831–
Landholding Agency: Energy
Property Number: 41200220035
Status: Unutilized
Reason: Secured Area

Bldg. 9404–07
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220036
Status: Unutilized
Reason: Secured Area

Bldg. 9404–08
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220037
Status: Unutilized
Reason: Secured Area

4 Bldgs.
Y–12 Natl Security Complex 9418–4, 9418–5, 9418–6, 9418–9
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220038
Status: Unutilized
Reason: Secured Area

Bldg. 9620–2
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220039
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 9769, 9770–3
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220040
Status: Unutilized
Reason: Secured Area

Bldgs. 9720–1, 9720–2
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220041
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9723–21
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220043
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 9205, 9208
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220059
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 2013, 2506, 6003
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200220060
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 9720–14
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200230002
Status: Excess
Reason: Secured Area

6 Bldgs.
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Location: 9983–62, 9983–63, 9983–64, 9983–65, 9983–71, 9983–72
Landholding Agency: Energy
Property Number: 41200230003
Status: Excess
Reason: Secured Area

4 Bldgs.
Oak Ridge National Lab
0954, 0961, 2093, 3013
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200310019
Status: Unutilized
Reason: Secured Area

22 Bldgs.
Volunteer Army Ammunition Plant
Warehouses (Southern Portion)
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930016
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–D–TN–594F

17 Bldgs.
Volunteer Army Ammunition Plant
Acid Production
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930017
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material; contamination
GSA Number: 4–D–TN–594F

41 Facilities
Volunteer Army Ammunition Plant
TNT Production
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930018
Status: Surplus
Reason: Contamination
GSA Number: 4–D–TN–594F

5 Facilities
Volunteer Army Ammunition Plant
Waste Water Treatment
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930019
Status: Surplus
Reason: Extensive deterioration
GSA Number: 4–D–TN–594F

6 Bldgs.
Volunteer Army Ammunition Plant
Offices (Southern Portion)
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930023
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–D–TN–594F

Army Reserve Center #2
360 Ornamental Metal Museum Dr.
Memphis Co: Shelby TN 38106–
Landholding Agency: GSA
Property Number: 54200120004
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material; Extensive deterioration
GSA Number: 4–D–TN–0650

Tract 01–186
Stones River Natl Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200230004
Status: Excess
Reason: Extensive deterioration

Texas

6 Bldgs.
Ellington Field
1277, 1381, 1385, 1386, 1388, 1249
Houston Co: Harris TX 77034–5586
Landholding Agency: Air Force
Property Number: 18200240010
Status: Excess
Reason: Extensive deterioration

Zone 5, Bldg. FS–18
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy

Property Number: 41200220044
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, Bldg. 11–001
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220045
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, 3 Bldgs.
11–015, 11–015B, 11–046
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220046
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, Bldg. 11–041
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220047
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, Bldg. 11–044
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–003P
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220049
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–05G1
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 11 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–010, 12–010V1, 12–010V2, 12–010L, 12–R–010, 12–012, 12–R–012, 12–012V, 12–R–013, 12–R–013RR, 12–13V
Landholding Agency: Energy
Property Number: 41200220051
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–017C
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220052
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–20
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 8 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–024, 12–024A, 12–02455, 12–025, 12–R–025, 12–030, 12–043, 12–043A
Landholding Agency: Energy
Property Number: 41200220054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–27
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220055
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–038
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220056
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 2 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–076, 12–076A
Landholding Agency: Energy
Property Number: 41200220057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 13, 6 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 13–041, 13–042, 13–043, 13–044, 13–045, 13–046
Landholding Agency: Energy
Property Number: 41200220058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

10 Bldgs.
DOE Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 11–023, 024, 034, 036, 036SS, 039, 039SS, 11–R–014, 11–R–020, 11–R–039
Landholding Agency: Energy
Property Number: 41200310020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 113
Naval Air Station
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 77200310054
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Virginia

Bldg. 417
Camp Pendleton
Virginia Beach Co: VA 23451–
Landholding Agency: Air Force
Property Number: 18200240011
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bayview Tower
Langley AFB
Langley AFB Co: VA 23665–
Landholding Agency: Air Force
Property Number: 18200240012
Status: Unutilized
Reason: Floodway

Washington

Goat Island Quarry
Skagit Co: WA
Landholding Agency: GSA
Property Number: 54200230005
Status: Excess
Reason: not accessible
GSA Number : 9–D–WA–1201

Federal Building
104 W. Magnolia
Bellingham Co: WA 98224–
Landholding Agency: GSA
Property Number: 54200310021
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 9–G–WA–1203

Wyoming

Bldg. 360
F. E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18200240013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Land (by State)

Arkansas

Sandy Beach Rec Area
Camden Co: Ouachita AR 71701–
Landholding Agency: GSA
Property Number: 54200230010
Status: Surplus
Reason: Floodway
GSA Number : 7–D–AR–566

Recreation Area
Sandy Beach
Camden Co: Ouachita AR 71701–
Landholding Agency: GSA
Property Number: 54200240003
Status: Surplus
Reason: Floodway
GSA Number : 7–D–AR–0566

Colorado

Landfill 48th & Holly Streets
Commerce Co: Adams CO 80022–
Landholding Agency: GSA
Property Number: 54200220006
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material; contamination
GSA Number : 7–Z–CO–0647

Florida

3 parcels
U.S. Customs Svc Natl Law Enforcement Comm Ctr
Orlando Co: Orange FL 32803–
Landholding Agency: GSA
Property Number: 54200310015
Status: Excess

Reason: landlocked
GSA Number : 4–T–FL–1209–1A

Michigan

Port/EPA Large Lakes Rsch Lab
Grosse Ile Twp Co: Wayne MI
Landholding Agency: GSA
Property Number: 54199720022
Status: Excess
Reason: Within airport runway clear zone
GSA Number : 1–Z–MI–554–A
20.3 acres

Moon Island
Munuscong Lake Co: Chippewa MI –
Landholding Agency: GSA
Property Number: 54200240008
Status: Excess
Reason: not accessible by road
GSA Number : 1–U–MI–803

5.43 acres
Drummond Island
Drummond Tnshp Co: Cheppawa MI –
Landholding Agency: GSA
Property Number: 54200240009
Status: Excess
Reason: not accessible by road
GSA Number : 1–U–MI–449A

Minnesota

Parcel A
Twin Cities Army Ammunition Plant
Arden Hills Co: MN 55112–3938
Landholding Agency: GSA
Property Number: 54200240014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 1–D–MN–0578A

Mississippi

Greenwood & Boat Ramp
Greenwood Co: Leflore MS
Landholding Agency: GSA
Property Number: 54200230013
Status: Surplus
Reason: Within airport runway clear zone
GSA Number : 4–D–MS–0560

Ohio

Lewis Research Center
Cedar Point Road
Cleveland Co: Cuyahoga OH 44135–
Landholding Agency: GSA
Property Number: 54199610007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; within airport runway clear zone
GSA Number : 2–Z–OH–598–I

Puerto Rico

Parcel 2E
Naval Security Group
Sabana Seca Co: Toa Baja PR
Landholding Agency: GSA
Property Number: 54200210024
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 1–N–PR–496

Parcel 2R
Naval Security Group
Sabana Seca Co: Toa Baja PR –
Landholding Agency: GSA
Property Number: 54200210025
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 1–N–PR–494

Parcel 2W
Naval Security Group
Sabana Seca Co: Toa Baja PR –
Landholding Agency: GSA
Property Number: 54200210026
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 1–N–PR–495

Washington

Hanford Training Site
Horn Rapids Rd.
Benton Co: WA
Landholding Agency: GSA
Property Number: 54200210012
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 9–B–WA1198A

Hanford Training Site #2
Horn Rapids Road
Benton Co: Benton WA
Landholding Agency: GSA
Property Number: 54200240017
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 9–B–WA–1198B

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71, 91, et al.

Special Operating Rules for the Conduct of Instrument Flight Rules (IFR) Area Navigation (RNAV) Operations Using Global Positioning Systems (GPS) in Alaska; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71, 91, 95, 121, 125, 129, 135

[Docket No. FAA–2003–14305; Special Federal Aviation Regulation No. 97]

RIN 2120–AH93

Special Operating Rules for the Conduct of Instrument Flight Rules (IFR) Area Navigation (RNAV) Operations Using Global Positioning Systems (GPS) in Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Under Special Federal Aviation Regulation (SFAR) No. 97, the FAA allows the use of Global Positioning System/Wide Area Augmentation Systems for the en route portion of flights on routes in Alaska outside the operational service volume of ground based navigation aids. The use of aircraft navigation equipment other than area navigation systems, that only permit navigation to or from ground-based navigation stations, often results in less than optimal routes or instrument procedures and an inefficient use of airspace. SFAR 97 optimizes routes and instrument procedures and provides for a more efficient use of airspace. Further, the FAA anticipates that it will result in an associated increase in flight safety.

DATES: This final rule is effective March 13, 2003.

FOR FURTHER INFORMATION CONTACT: Donald W. Streeter, Flight Technologies and Procedures Division (AFS–400), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 385–4567; e-mail: *donald.w.streeter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

You can get an electronic copy of this final rule through the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm;* or

(3) Accessing the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You also can get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or amendment number of this rulemaking.

Background

Aviation is critical to Alaska for routine travel and commerce, and for nearly any kind of emergency. Only 10% of Alaska is accessible by road, and waterways are impassable most of each year. Alaska also is very large and crisscrossed by mountains that block radio and radar transmissions so that aviation services and infrastructure that are available in the 48 contiguous states are not available in many areas of Alaska. Aviation is essential to Alaska, but there also is a safety consequence of operating in this environment. The aviation accident rate for rural Alaska is 2.5 times the average for the rest of the United States. The Capstone Program is one initiative by the FAA to reduce this accident rate.

The Capstone Program is a joint initiative by the FAA Alaskan Region and the aviation industry to improve safety and efficiency in Alaska by using new technologies. Derived from the National Transportation Safety Board (NTSB) and industry recommendations, Capstone Phase I focuses on southwest Alaska (the Yukon and Kuskokwim River Delta—YK Delta), which is isolated, has limited infrastructure, and has the same high rate of aviation accidents experienced in the rest of the state. Under Capstone, installation of advanced avionics in the YK Delta aircraft began in November 1999 and expansion of ground infrastructure and data collection will continue through December 2004. Relying on lessons learned during Phase I, Capstone Phase II is beginning in southeast Alaska. A more robust set of avionics, that include Global Positioning Systems/Wide Area Augmentation Systems (GPS/WAAS), is being deployed that aims at further reduction of controlled flight into terrain and mid-air collision accidents. In addition, instrument flight rules (IFR) area navigation (RNAV) procedures are being introduced that enable participants to conduct IFR operations on published routes, improving overall safety and capacity.

The current operating rules under the Federal Aviation Regulations in title 14 of the Code of Federal Regulations (14 CFR) do not accommodate the use of GPS/WAAS technology for IFR RNAV outside the operational service volume of ground-based navigation aids. SFAR 97 allows the timely approval of approximately 200 aircraft that are being equipped under Capstone Phase II to conduct IFR RNAV operations using GPS/WAAS navigation systems. Additionally, SFAR 97 provides the opportunity for air carrier and general aviation operators, other than those participating in the Capstone Program, to voluntarily equip aircraft with advanced GPS/WAAS avionics that are manufactured, certified, and approved for IFR RNAV operations. This SFAR serves two purposes: (1) It allows persons to conduct IFR en route RNAV operations in the State of Alaska and its airspace on published air traffic routes using TSO C145a/C146a navigation systems as the only means of IFR navigation; and (2) it allows persons to conduct IFR en route RNAV operations in the State of Alaska and its airspace at Special MEA that are outside the operational service volume of ground-based navigation aids.

The FAA proposed SFAR 97 on January 24, 2003 (68 FR 3778). The comment period closed on February 24, 2003. The FAA received four comments on the proposed SFAR.

Discussion of Comments

Three comments received on the proposed SFAR supported the proposal. A pilot commented that this is a positive move toward improved safety and efficiency of operations in Alaska. The Alaska Airmen's Association commented that the SFAR provides more reliable navigation. The Association noted that by allowing safer minimum altitudes, the rule allows aircraft to fly below freezing/icing levels. It also noted greater operational capability. The Aircraft Owners and Pilots Association (AOPA) stated that SFAR 97 would also facilitate further development of the AOPA-supported Capstone Program, which uses current-day technology to increase capacity while improving safety. Allowing the use of Global Positioning System/Wide Area Augmentation Systems (GPS/WAAS) for the en route portion of flights on routes in Alaska will further reduce the chances for controlled flight into terrain and midair collisions while at the same time improving capacity.

The Boeing Commercial Airplane Group agreed with the intent and goal of proposed SFAR 97 but noted the following:

''1. The NPRMs provisions are inconsistent with movement towards a Performance based International Airspace System (INAS), and are inconsistent with applications of RNP (*e.g.,* it addresses only specific limited technologies; does not credit other more capable technologies, and has underlying angular criteria implications that are inappropriate in an inherently

linear future RNAV and RNP criteria world).''

FAA Response: SFAR 97 addresses specific safety issues existing in Alaska. Further, the SFAR only addresses the enroute lateral navigation capability of GPS and is not intended as a model for future rulemaking on RNP in the International Airspace System. Nothing in SFAR 97 precludes development of more capable technologies and systems.

''2. The NPRM sets precedents with regard to inappropriate definitions and concepts that are inconsistent with and adversely interfere with necessary ''Global'' navigation systems evolution (*e.g.,* Special MEA: 4000G).''

FAA Response: SFAR 97 addresses a specific safety need, is limited in geographic application, and is not proposed as a model for the future. As stated in Section 2 of SFAR 97, the definitions of this rule apply only to this SFAR. It is anticipated that this SFAR may be terminated when the national RNAV rule is in place. Therefore, FAA finds this SFAR does not ''adversely interfere with necessary 'Global' navigation systems evolution.''

''3. By its issuance, the NPRM could inappropriately set a precedent, inferring that this type SFAR is needed when it is not, and thus imply that other better and more capable (*e.g.*, RNP-based or GNSS based) systems may not be useable or eligible for MEA, route, or procedure credit, or that even some current operations (*e.g.,* Alaska Airlines RNP operations) may be addressed by such an SFAR which in fact is not necessary.''

FAA Response: As stated in the NPRM for SFAR 97, the current regulatory structure does not accommodate the use of GPS/WAAS technology for IFR RNAV outside the operational service volume of ground-based navigation aids. The FAA does not agree that the operations envisioned by SFAR 97 are appropriately conducted without this regulatory action. Nothing herein is intended to preclude or otherwise address certification, use, or operational approval of ''other better and more capable'' systems.

''4. The intended Capstone related capability can more easily and readily be achieved other ways (*e.g.*, by FAA approval or specific means via Op Spec, FSDO LOA, or various FAA Orders and associated AIM changes). Even if an SFAR was desired (and it should not be necessary), it could be done via a very simple SFAR issuance that essentially says that 'Other routes, procedures, navigation systems, or operations may be authorized in Alaskan airspace, as determined by the Administrator'.''

FAA Response: As noted, the current regulatory structure does not accommodate the use of GPS/WAAS technology for IFR RNAV outside the operational service volume of ground-based navigation aids. Operations envisioned under SFAR 97 include Parts 91, 121, 129, and 135. The FAA finds that due to the disparity in type of operations, no single administrative remedy could address all operators, and such an approach would be overly and unnecessarily burdensome for both the FAA and operators alike. The FAA finds that regulatory action is appropriate in resolving the existing regulatory deficiency for use of GPS systems in Alaska for IFR RNAV outside the operational service volume of ground-based navigational aids.

''5. The currently proposed SFAR appears to set criteria that may actually be harmful to expeditious and beneficial Alaska airspace management and evolution by implicitly invoking airspace standards that are overly restrictive and constraining (*e.g.*, not recognizing the credit of linear criteria capable systems, or better systems related to RNP and networks of LAAS, or limiting airspace planning to very narrowly defined specific systems such as for special GPS MEAs [4000G], when other combinations of navigation systems could provide equal or better airspace performance.''

FAA Response: SFAR 97 relaxes current existing regulatory requirements for surface based navigation capability only for aircraft equipped with appropriate TSO C145a/C146a GPS equipment. This rulemaking is not intended to address current or future capabilities attainable with appropriately installed and approved RNP capable systems. The FAA finds that permitting operations beyond service volume of ground based navigation aids adds previously unattainable and beneficial flexibility to management of and safe navigation through Alaskan airspace. The FAA anticipates that that experience gained through these Alaskan operations may provide a more precise and accurate basis for the formulation of future policies on airspace design that are now a work in progress.

''6. Language of the NPRM is technically flawed in that it make assertions like' * * * (GNSS) encompasses all satellite ranging technologies', when in fact the performance of some satellite-based systems may or may not alone meet specific RNP provisions (*e.g.*, some international systems), particularly in some regions of Alaska airspace.''

FAA Response: SFAR 97 makes no attempt to address or compare RNP performance to performance of existing satellite systems and only addresses operations with TSO C145a/C146a equipment in Alaska.

''7. The NPRM appears to exclusively attempt to credit systems meeting criteria only of TSO C145a/C146a. This is not appropriate technically because of certain characteristics of those systems which can be contrary to the general direction navigation needs to evolve in an RNP-based global system (*e.g.*, aspects of inappropriate angular criteria of C146 versus the more appropriate linear criteria of RNP; and system pilot interface issues). While these C145a/C146a systems may be beneficially purchased and operationally used, their inappropriate (*e.g.*, angular) characteristics should not be the basis (and certainly not exclusive basis) for future INAS procedure or airspace design, even in a limited region, in limited circumstances.''

FAA Response: As previously noted, the FAA intends SFAR 97 to address specific safety issues existing in Alaska, limits applicability to operations based on GPS within Alaska, addresses lateral navigation capabilities only, and is not proposed as a model for future rulemaking on RNP in the International Airspace System. The purpose of this SFAR is to address en route operations and is not intended to address approach procedures. FAA further finds nothing in SFAR 97 that precludes continued development of more capable technologies or eventual evolution of global RNP systems as eventually determined appropriate.

''8. Application of any of this SFAR to FAR 129 Operators is most inappropriate (*e.g.*, international operators flying in U.S. airspace). International Operations and international operators should be planning and equipping exclusively based on RNP-based criteria, ILS, LAAS, and GLS. Even if WAAS is used as a sensor in RNAV systems, international navigation criteria should be principally focused on RNP capability, not be defined as sensor specific.''

FAA Response: SFAR 97 neither precludes or requires international operators to equip with navigation systems other than as currently provided in existing regulations and operations specifications. Additionally, nothing in SFAR 97 addresses operations other than within Alaskan airspace. The rule gives part 129 operators the ability to operate in areas (including lower altitudes) that are outside the service volume of ground-based navigational rules.

''9. This NPRM is not currently consistent with some key FAA criteria (AC120–29A) and the direction key large aircraft manufacturers and operators are evolving future navigation systems or operational capability. If adopted without significant change, any final rule based significantly on this NPRM could unnecessarily restrict and inhibit beneficial and necessary evolution of RNP related systems and applications.''

FAA Response: While stating the NPRM is not consistent with some key FAA criteria per AC120–29A, the commenter does not provide sufficient information to identify the inconsistency. Advisory circulars provide advice on methods to comply with regulatory requirements; therefore, there is no requirement that an SFAR conform to an Advisory Circular. SFAR 97 provides the appropriate and intended regulatory structure for operations in Alaskan airspace that are outside the service volume of ground-based navigational aids. Additionally, as already noted, SFAR 97 does not preclude appropriate evolution and broad inclusion of other appropriately certificated and approved systems, including RNP systems, into the Global NAS.

''10. Numerous areas of analysis or comment in the NPRM preamble are also inappropriate, incorrect, or misleading. Significant revision of the preamble is also needed, before any final rule is issued (*e.g.*, incorrect suppositions about the applicability or flexibility of current rules).''

FAA Response: Insufficient specificity is provided to locate any such unintended anomalies. Specific comments addressing issues of applicability and/or flexibility of current rules have already been addressed above.

As a general comment, Boeing also recommended that this SFAR not be issued independently, but rather that the editing of this SFAR be delegated to the AWO and TAOARC groups. While no reason for such additional editing by specific named groups is offered, providing such an additional period would be unfair to those who commented during the prescribed period. The FAA does not agree with this recommendation and finds the rulemaking provisions of 14 CFR part 11 are applicable to this SFAR and have been followed.

In a separate comment, American Trans Air stated, ''The proposed rule uses language, terms and definitions found only in other OPEN proposed rulemaking actions (FAA–2002–14002 and FAA–2003–14449). Request this action be delayed/postponed until public comments regarding critical language contained in FAA–2002–14002 are resolved. This delay is necessary to allow the Proposed Rule to be reviewed in it's proper context and ensure common understanding and terminology with RNAV operations.''

FAA Response: FAA recognizes that language, terms, and definitions used in SFAR 97 also are found in other open rulemaking proposals. Definitions of language and terms used in SFAR 97 are applicable only to this SFAR, as stated in Section 2.

Based on its analysis of comments, the FAA adopts SFAR 97 as proposed.

Reference Material Relevant to SFAR 97

(1) Technical Standard Order (TSO) C145a, Airborne Navigation Sensors Using the Global Positioning System (GPS) Augmented by the Wide Area Augmentation System (WAAS); and (2) TSO C146a, Stand-Alone Airborne Navigation Equipment Using the Global Positioning System (GPS) Augmented by the Wide Area Augmentation System (WAAS). Copies of these TSOs may be obtained from the FAA Internet Web site at *http://www.faa.gov/certification/aircraft/TSOA.htm.*

Related Activity

The FAA is conducting a thorough review of its rules to ensure consistency between the operating rules of 14 CFR and future RNAV operations for the NAS. This review may result in rulemaking that could enable the use of space-based navigation aid sensors for aircraft RNAV systems through all phases of flight (departure, en route, arrival, and approach) to enhance the safety and efficiency of the NAS. The changes anticipated could result in greater flexibility in air traffic routing, instrument approach procedure design, and airspace use than is now possible with a ground-based navigation aid system structure. The improved navigation accuracy and flexibility could enhance both system capacity and overall flight safety, and could promote the ''free flight'' concept in the NAS by enabling the NAS to move away from reliance on ground-based NAVAIDs. SFAR 97 supports this activity as an early implementation effort. The FAA anticipates that that experience gained through these Alaskan operations may provide a more precise and accurate basis for future policies on airspace design which are now a work in progress.

Contrary Provisions of the Current Regulations

People who conduct operations in Alaska in accordance with SFAR 97 are excepted from certain provisions of the FAA's regulations. For instance:

14 CFR 71.75. Extent of Federal airways. The extent of Federal airways is currently referenced as a center line that extends from one navigational aid or intersection to another navigational aid or intersection specified for that airway. SFAR 97 allows the Federal airway and other routes published by the FAA to be referenced and defined by one or more fixes that are contained in an RNAV system's electronic database that is derived from GPS satellites and used by the pilot to accurately fly the Federal airway or other published routes without reference to the ground based navigational aids that define those routes.

14 CFR 91.181. Course to be flown. Section 91.181 defines courses to be flown along Federal airways that are only referenced to station referenced navigational aids or fixes defining that route. SFAR 97 allows courses to be flown on Federal airways and other published routes that are defined by waypoints or fixes contained in a GPS WAAS navigation system that is certified for IFR navigation.

14 CFR 91.205(d)(2). Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements. Section 91.205(d)(2) states that navigational equipment appropriate to the ground facilities to be used is required for IFR operations and does not include RNAV equipment. Under SFAR 97, operations can be conducted using navigation equipment that is not dependent on navigating only to and from ground-based radio navigation stations.

14 CFR 91.711(c)(1)(ii) and 91.711(e). Special rules for foreign civil aircraft. Section 91.711(c)(1)(ii) requires foreign civil aircraft operating within the United States and conducting IFR operations to be equipped with radio navigational equipment appropriate to the navigational signals to be used and does not accommodate the use of RNAV systems for instrument flight rules operations. Section 91.711(e) states that no person may operate a foreign civil aircraft within the 50 states and the District of Columbia at or above flight level (FL) 240 unless the aircraft is equipped with distance measuring equipment (DME) capable of receiving and indicating distance information from the VORTAC facilities to be used. Although an IFR approved RNAV system provides distance information,

this section does not allow the use of an RNAV system in lieu of DME.

14 CFR 95.1. Applicability. Part 95 prescribes altitudes governing the operation of aircraft under IFR on Federal airways, jet routes, area navigation low or high routes, or other direct routes for which a minimum enroute altitude (MEA) is designated. In addition, it designates mountainous areas and changeover points. In general, the IFR altitudes prescribed in this section are determined by a route analysis based on the following factors: (1) An obstacle clearance assessment; (2) the lowest altitude at which the aircraft radio navigation receivers are able to receive the ground-based radio navigation fixes defining the airway, segment or route; and (3) the lowest altitude at which two-way voice communication between the aircraft and the air traffic control unit can be maintained. No accommodation is made for IFR altitudes determined by the above route analysis factors over routes that may be defined by fixes other than ground-based navigation aid fixes. Under SFAR 97, operators using IFR certified GPS/WAAS RNAV systems are permitted to conduct operations over routes in Alaska at the lowest minimum en route altitude based only on route obstacle assessments and ATC two-way voice communication capability. This MEA is defined as the ''special MEA'' for purposes of SFAR 97 to distinguish it from MEAs established under part 95.

14 CFR 121.349(a). Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top. Section 121.349(a) requires airplanes to be equipped with two independent radio navigation systems that are able to receive radio navigational signals from all primary en route and approach navigational facilities intended to be used. This section does not allow, nor does any other section of part 121, allow the use of RNAV GNSS for IFR navigation on Federal airways and other routes. SFAR 97 allows the use of IFR-certified RNAV GPS/WAAS systems for IFR navigation.

14 CFR 125.203(b) and (c). Radio and navigational equipment. These sections state that no person may operate an airplane over-the-top or under IFR unless it has two independent receivers for navigation that are able to receive radio signals from the ground facilities to be used and which are capable of transmitting to, and receiving from, at any place on the route to be flown, at least one ground facility. These sections do not allow the use of RNAV GNSS for IFR navigation for any airplanes conducting IFR operations under part 125 in the NAS. SFAR 97 allows for the use of IFR-certified RNAV GPS/WAAS systems for IFR navigation.

14 CFR 129.17(a) and (b). Radio Equipment. Sections 129.17(a) and (b) state that subject to the applicable laws and regulations governing ownership and operation of radio equipment, each foreign air carrier shall equip its aircraft with such radio equipment as is necessary to properly use the air navigation facilities. This section does not include or allow IFR RNAV GNSS to be used for air navigation on Federal airways or other published routes. SFAR 97 allows the use of IFR-certified RNAV GPS/WAAS systems for air navigation on Federal airways or other published routes.

14 CFR 135.165. Radio and navigational equipment: Extended overwater or IFR operations. Section 135.165 excludes turbojet airplanes with 10 or more passenger seats, multiengine airplanes in a commuter operations, as defined under 14 CFR part 119, and other aircraft from conducting IFR or extended overwater operations unless they have a minimum of two independent receivers for navigation appropriate to the facilities to be used that are capable of transmitting to, and receiving from, at any place on the route to be flown, at least one ground facility. Since IFR-certified RNAV GPS/WAAS systems do not receive navigation position information from ground facilities, they would not be acceptable for navigation based on this section. SFAR 97 allows the use of IFR-certified RNAV GPS/WAAS systems in lieu of aircraft navigation equipment that uses ground-based navigation facilities to navigate.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there are no new information collection requirements associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to SFAR 97.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined that this rule: (1) Will generate benefits and not impose any costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation. No comments were received that conflicted with the economic assessment of minimal impact published in the notice of proposed rulemaking for this action. Given the reasons presented below, and the fact that no comments were received to the contrary, the FAA has determined that the expected impact of this rule is minimal and that the final rule does not warrant a full evaluation.

This rule establishes a minimum equipment and operational approval

requirement that operators have to comply with to operate at lower minimum en route altitudes (MEAs) that are outside the service volume of ground-based navigation aids. It is anticipated that most of the participants who volunteer to participate in Capstone Phase II will not incur any costs to equip their aircraft or conduct required training. Operators are not required to operate at these lower MEAs. Those who voluntarily decide to incur the costs to equip their aircraft and conduct the required training under this SFAR will have made their own business decisions that the costs associated with this SFAR's equipment and other requirements are worth the benefits of lower MEAs. For example, some operators will have concluded that flying at lower altitudes opens up markets that they could not previously have served because currently they do not have aircraft that can fly at certain altitudes on some routes and maintain reception with ground-based navigation aids. Other operators will conclude that having the ability to operate at lower MEAs will result in fewer flight cancellations or delays due to adverse weather (e.g., icing at higher altitudes).

Regarding benefits, this rule implements the National Transportation Board's recommendation ''to demonstrate a low altitude instrument flight rules (IFR) system that better fulfills the needs of Alaska's air transportation system.'' [1] An interim assessment of the safety impact of Capstone Phase 1 test program found that ''while the rates of accidents for specific causes have not changed in a way that is statistically significant yet, the over-all accident counts for the equipped and non-equipped groups were different: 12 accidents for non-equipped versus 7 for equipped even though each had nearly identical operations counts.'' [2] Operators having RNAV-equipped aircraft and flightcrews trained under this SFAR will realize safety benefits when such flights encounter adverse weather conditions en route at higher altitudes and they have the ability to seek clearance to the lower MEAs en route. In addition to the anticipated safety benefits, the rule might result in cost savings. The use of IFR RNAV equipment permits the use of more direct and therefore shorter routes and aircraft using RNAV equipment may require less fuel and time to reach their destinations. The FAA has established a number of test routes throughout the United States and some airlines have estimated annual cost savings in excess of $30 million dollars due to flying these advanced RNAV routes.[3] The FAA finds that the potential safety benefits and cost savings justify the adoption of this rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule establishes the minimum equipment and operational approval requirements that operators comply with to participate in the Alaska Capstone Phase II test and evaluation program. Most of the participants who volunteer to participate in this test program will not incur any costs to equip their aircraft or conduct required training since the Capstone Program was congressionally funded. No comments were received that differed with the assessment given in this section of the proposed rulemaking. The FAA therefore certifies that the rule will not have a significant economic impact on a substantial number of small operators.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This rule imposes requirements on foreign air carriers operating in the SFAR area if they elect to participate in the test program. These requirements mirror the communication and navigation equipment requirements placed on domestic carriers that participate in the test program. No comments were received objecting to these provisions. The FAA has assessed the potential effect of this final rule and has determined that it will have a neutral impact on foreign trade and, therefore, create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed SFAR 97 under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations under title 14 of

[1] Aviation Safety In Alaska (NTSB/SS–95/03) November 1995, page 77.

[2] The Safety Impact of Capstone Phase 1 (W. Worth Kirkman, Mitre) August 2002, page 15.

[3] 2001 ACE Plan, Building Capacity Today for the Skies of Tomorrow, FAA Office of System Capacity, prepared jointly by FAA and ARP Consulting, L.L.C., December 2001, pages 50–51.

the CFR that affect interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. The FAA considers that this rule will be beneficial to operations in Alaska.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), SFAR 97 qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that SFAR 97 is not a major regulatory action under the provisions of the EPCA.

Justification for Immediate Adoption

Because this final rule is optional, that is, operators in Alaska may choose to meet the equipment and operational requirements of SFAR 97 or comply with the current regulations, the FAA finds that this SFAR may be adopted without meeting the required minimum 30-day notice period. The effective date for SFAR 97, March 13, 2003, is based, in part, on route charting dates for southeast Alaska and delay beyond that date would incur additional expense to the Government and be detrimental to operators.

List of Subjects

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air), Puerto Rico.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security, Smoking.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

PART 91—GENERAL OPERATING AND FLIGHT RULES

2. The authority citation for Part 91 Continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

3. Amend parts 71, 91, 95, 121, 125, 129, and 135 by adding SFAR No. 97. The full text will appear in part 91.

Special Federal Aviation Regulation No. 97—Special Operating Rules for the Conduct of Instrument Flight Rules (IFR) Area Navigation (RNAV) Operations using Global Positioning Systems (GPS) in Alaska

Those persons identified in Section 1 may conduct IFR en route RNAV operations in the State of Alaska and its airspace on published air traffic routes using TSO C145a/C146a navigation systems as the only means of IFR navigation. Despite contrary provisions of parts 71, 91, 95, 121, 125, and 135 of this chapter, a person may operate aircraft in accordance with this SFAR if the following requirements are met.

Section 1. *Purpose, use, and limitations*

a. This SFAR permits TSO C145a/C146a GPS (RNAV) systems to be used for IFR en route operations in the United States airspace over and near Alaska (as set forth in paragraph c of this section) at Special Minimum En Route Altitudes (MEA) that are outside the operational service volume of ground-based navigation aids, if the aircraft operation also meets the requirements of sections 3 and 4 of this SFAR.

b. Certificate holders and part 91 operators may operate aircraft under this SFAR provided that they comply with the requirements of this SFAR.

c. Operations conducted under this SFAR are limited to United States Airspace within and near the State of Alaska as defined in the following area description:

From 62°00′00.000″N, Long. 141°00′00.00″W.; to Lat. 59°47′54.11″N., Long. 135°28′38.34″W.; to Lat. 56°00′04.11″N., Long. 130°00′07.80″W.; to Lat. 54°43′00.00″N., Long. 130°37′00.00″W.; to Lat. 51°24′00.00″N., Long. 167°49′00.00″W.; to Lat. 50°08′00.00″N., Long. 176°34′00.00″W.; to Lat. 45°42′00.00″N., Long. −162°55′00.00″E.; to Lat. 50°05′00.00″N., Long. −159°00′00.00″E.; to Lat. 54°00′00.00″N., Long. −169°00′00.00″E.; to Lat. 60°00 00.00″N., Long. −180°00′ 00.00″E; to Lat. 65°00′00.00″N., Long. 168°58′23.00″W.; to Lat. 90°00′00.00″N., Long. 00°00′0.00″W.; to Lat. 62°00′00.000″N, Long. 141°00′00.00″W.

(d) No person may operate an aircraft under IFR during the en route portion of flight below the standard MEA or at the special MEA unless the operation is conducted in accordance with sections 3 and 4 of this SFAR.

Section 2. *Definitions and abbreviations*

For the purposes of this SFAR, the following definitions and abbreviations apply.

Area navigation (RNAV). RNAV is a method of navigation that permits aircraft operations on any desired flight path.

Area navigation (RNAV) route. RNAV route is a published route based on RNAV that can be used by suitably equipped aircraft.

Certificate holder. A certificate holder means a person holding a certificate issued under part 119 or part 125 of this chapter or holding operations specifications issued under part 129 of this chapter.

Global Navigation Satellite System (GNSS). GNSS is a world-wide position and time determination system that uses satellite ranging signals to determine user location. It encompasses all satellite ranging technologies, including

GPS and additional satellites. Components of the GNSS include GPS, the Global Orbiting Navigation Satellite System, and WAAS satellites.

Global Positioning System (GPS). GPS is a satellite-based radio navigational, positioning, and time transfer system. The system provides highly accurate position and velocity information and precise time on a continuous global basis to properly equipped users.

Minimum crossing altitude (MCA). The minimum crossing altitude (MCA) applies to the operation of an aircraft proceeding to a higher minimum en route altitude when crossing specified fixes.

Required navigation system. Required navigation system means navigation equipment that meets the performance requirements of TSO C145a/C146a navigation systems certified for IFR en route operations.

Route segment. Route segment is a portion of a route bounded on each end by a fix or NAVAID.

Special MEA. Special MEA refers to the minimum en route altitudes, using required navigation systems, on published routes outside the operational service volume of ground-based navigation aids and are depicted on the published Low Altitude and High Altitude En Route Charts using the color blue and with the suffix ''G.'' For example, a GPS MEA of 4000 feet MSL would be depicted using the color blue, as 4000G.

Standard MEA. Standard MEA refers to the minimum en route IFR altitude on published routes that uses ground-based navigation aids and are depicted on the published Low Altitude and High Altitude En Route Charts using the color black.

Station referenced. Station referenced refers to radio navigational aids or fixes that are referenced by ground based navigation facilities such as VOR facilities.

Wide Area Augmentation System (WAAS). WAAS is an augmentation to GPS that calculates GPS integrity and correction data on the ground and uses geo-stationary satellites to broadcast GPS integrity and correction data to GPS/WAAS users and to provide ranging signals. It is a safety critical system consisting of a ground network of reference and integrity monitor data processing sites to assess current GPS performance, as well as a space segment that broadcasts that assessment to GNSS users to support en route through precision approach navigation. Users of the system include all aircraft applying the WAAS data and ranging signal.

Section 3. *Operational Requirements*

To operate an aircraft under this SFAR, the following requirements must be met:

a. Training and qualification for operations and maintenance personnel on required navigation equipment used under this SFAR.

b. Use authorized procedures for normal, abnormal, and emergency situations unique to these operations, including degraded navigation capabilities, and satellite system outages.

c. For certificate holders, training of flight crewmembers and other personnel authorized to exercise operational control on the use of those procedures specified in paragraph b of this section.

d. Part 129 operators must have approval from the State of the operator to conduct operations in accordance with this SFAR.

e. In order to operate under this SFAR, a certificate holder must be authorized in operations specifications.

Section 4. *Equipment Requirements*

a. The certificate holder must have properly installed, certificated, and functional dual required navigation systems as defined in section 2 of this SFAR for the en route operations covered under this SFAR.

b. When the aircraft is being operated under part 91, the aircraft must be equipped with at least one properly installed, certificated, and functional required navigation system as defined in section 2 of this SFAR for the en route operations covered under this SFAR.

Section 5. *Expiration date*

This Special Federal Aviation Regulation will remain in effect until rescinded.

PART 95—IFR ALTITUDES

4. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, and 14 CFR 11.49 (b)(2).

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

6. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

8. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g) 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

Issued in Washington, DC, on March 13, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–6749 Filed 3–20–03; 8:45 am]

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Federal Register

Friday,
March 21, 2003

Part V

Department of Education

Comprehensive School Reform Quality Initiatives; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.332B]

Comprehensive School Reform Quality Initiatives

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

NOTE TO APPLICANTS: This notice is a complete application package. Together with the statute authorizing these grants and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under the competition. These grants are authorized under section 1608 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

PURPOSE OF THE PROGRAM: The purpose of the Comprehensive School Reform (CSR) Quality Initiatives program is to support activities in the following categories:

(1) *Technical assistance in making informed decisions.* To support public and private efforts in which funds are matched by private organizations to assist States, local educational agencies (LEAs), and schools in making informed decisions regarding approving or selecting providers of comprehensive school reform, consistent with the requirements in section 1606(a) of the ESEA, as amended; and

(2) *Model development and capacity building.* To foster the development of comprehensive school reform models, and to provide effective capacity building for comprehensive school reform providers to expand their work in more schools, assure quality, and promote financial stability.

Eligible Applicants: Public or private organizations that provide educational or related services.

Deadline for Transmittal of Applications: May 5, 2003.

Notification of Intent to Apply for Funding: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply for funding. Therefore, we strongly encourage each potential applicant to send, by April 7, 2003, a notification of its intent to apply for funding to the following address: *irene.harwarth@ed.gov.*

The notification of intent to apply for funding is *optional* and should not include information regarding the proposed application. Eligible applicants that fail to provide the notification may still submit an application by the application deadline.

Estimated Available Funds: Approximately $7 million of fiscal year (FY) 2002 funds. Of this amount, we will award approximately $2 million to support activities under category 1 (*i.e.*, technical assistance in making informed decisions) and approximately $5 million to support activities under category 2 (*i.e.*, model development and capacity building).

Estimated Number of Awards: We anticipate making 1 to 2 awards under each category.

Estimated Range of Awards: $1 million—$2 million annually under category 1 (*i.e.*, technical assistance in making informed decisions); $2.5 million—$5 million annually under category 2 (*i.e.*, model development and capacity building). Funding of continuation awards after the initial year of funding is contingent upon future Congressional appropriations for the program.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: The State-administered Comprehensive School Reform (CSR) Program and the CSR Quality Initiatives are both authorized under Part F of Title I of the ESEA, as amended. The State-administered CSR program is designed to improve student achievement by supporting the implementation of comprehensive school reforms based on scientifically based research and effective practices so that all children, especially those in low-performing, high-poverty schools, can meet challenging State academic achievement standards. Comprehensive school reform is a systemic approach to schoolwide improvement that incorporates every aspect of a school, including curriculum, instruction, school management, professional development, parental involvement, and assessment plans. The program requires LEAs and schools to draw together individual initiatives that focus on specific areas and weave them into a unified, coherent comprehensive school reform design that integrates the eleven statutory components delineated in section 1606(a) of the ESEA, as amended.

The intent of the CSR Quality Initiatives program is to support activities that will enhance the State-administered CSR program. Under the Quality Initiatives competition, the Secretary will award funds to support activities in two categories—(1) technical assistance in making informed decisions, and (2) model development and capacity building. Grantees under category 1 will assist States, LEAs, and schools in making informed decisions regarding approving or selecting providers of comprehensive school reform, in a manner that meets the requirements of section 1606(a) of the ESEA, as amended. The category 2 awards will encourage, facilitate, and support the development of comprehensive school reform models that schools may integrate into a program that meets the eleven statutory CSR components. These grants will also assist comprehensive school reform providers in building their capacity to expand their work in more schools, assure quality, and promote financial stability.

The category 1 and category 2 awards will be peer reviewed separately on the basis of selection criteria specific to each of the competitions. These selection criteria are included in this Notice. An applicant seeking funding under both categories must submit separate applications addressing the respective criteria for each category.

Absolute Priority for Category 1 Applicants: For category 1 grants (*i.e.*, technical assistance in making informed decisions), the legislation requires that the awards be matched by private organizations. In response to this requirement, the Secretary establishes the following absolute priority under 34 CFR 75.105(c)(3) and will fund under the Category 1 competition only those applicants that meet this priority:

The applicant demonstrates, in its grant application, that its Quality Initiative award will be matched with funds from one or more private organizations. During the first year of the project, the match, excluding any in-kind contributions, must total at least 20 percent of the grantee's initial CSR Quality Initiative award. During any subsequent year of the project, the match, excluding any in-kind contributions, must total at least 25 percent of the grantee's continuation award for that year.

Competitive Preferences for Category 1 Applicants: To help ensure that the activities supported under category 1 (*i.e.*, technical assistance in making informed decisions) of the CSR Quality Initiatives program best address the needs of States, districts and schools,

the Secretary establishes the following competitive preferences under 34 CFR 75.105(c)(2). We will award an applicant, in addition to any points that it earns under the selection criteria for the category 1 awards, up to five additional points for addressing each preference (for a total of up to 10 preference points):

Competitive preference (1)—The grantee will provide detailed, high-quality information and technical assistance that will enable States, districts, and schools to select among multiple CSR providers, rather than provide such information or assistance concerning only one provider.

Competitive preference (2)—The grantee will assist urban and rural LEAs and schools in more than one State.

Invitational Priority for Category 1 Applicants: Under the Category 1 Competition, the Secretary is particularly interested in receiving applications from applicants that meet the following invitational priority:

The grantee will focus its efforts on providing States, LEAs, and schools with practical and useful information regarding the evidence of the success and effectiveness of widely-used comprehensive school reform models. The grantee will disseminate the findings of the reviews in a timely manner. Additionally, the grantee will provide direct technical assistance to States, LEAs, and schools in order to facilitate informed decision-making in the selection of models.

Under 34 CFR 75.105(c)(1) the Secretary does not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Invitational Priority for Category 2 Applicants: For the Category 2 Competition there is no absolute priority, or competitive preference. However, the Secretary is particularly interested in applications from applicants that meet the following invitational priority:

The applicant has a demonstrated record of success in fostering the development and sustainability of multiple providers of comprehensive school reform models and services.

Under 34 CFR 75.105(c)(1) the Secretary does not give an application that meets this invitational priority a competitive or absolute preference over other applications.

Selection Criteria: We will use different selection criteria to evaluate the category 1 and category 2 applications.

(I) Selection Criteria for Category 1 Applicants

We will use the following selection criteria and factors from the regulations at 34 CFR 75.210 in evaluating applications for grants under Category 1 '' Technical Assistance in Making Informed Decisions. The maximum score for each criterion is indicated in parenthesis. Within each criterion, we will evaluate each factor equally.

The maximum score for all of the criteria is 100 points. Thus, the maximum score for this competition is 110 points (100 points under the selection criteria and 10 points under the competitive preferences).

(a) *Need for Project.* (15 points) In determining the need for the proposed project, we consider—

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps and weaknesses.

(b) *Significance.* (5 points) In determining the significance of the proposed project, we consider—

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(c) *Quality of the Project Design.* (35 points) In determining the quality of the design of the proposed project, we consider—

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(3) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(d) *Quality of Project Personnel.* (30 points) In determining the quality of the personnel who will carry out the proposed project, we consider the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, we consider—

(1) The qualifications, including relevant training and experience, of the project director; and

(2) The qualifications, including relevant training and experience, of key project personnel.

(a) *Quality of the Project Evaluation.* (15 points) In determining the quality of the evaluation of the proposed project, we consider—

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(II) Selection Criteria for Category 2 Applicants

We will use the following selection criteria and factors from the regulations at 34 CFR 75.210 in evaluating applications for grants under Category 2—Model Development and Capacity Building. The maximum score for each criterion is indicated in parenthesis. Within each criterion, we will evaluate each factor equally. The maximum score for all of the criteria is 100 points.

(a) *Need for the Project.* (15 points) In determining the need for the proposed project, we consider the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps and weaknesses.

(b) *Significance.* (5 points) In determining the significance of the proposed project, we consider—

(1) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(2) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) *Quality of the Project Design.* (35 points) In determining the quality of the design of the proposed project, we consider—

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the proposed project is based upon a scientific research design, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(3) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(d) *Quality of Project Personnel.* (30 points) In determining the quality of the personnel who will carry out the proposed project, we consider the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, we consider—

(1) The qualifications, including relevant training and experience, of the project director; and

(2) The qualifications, including relevant training and experience, of key project personnel.

(e) *Quality of the Project Evaluation.* (15 points) In determining the quality of the evaluation of the proposed project, we consider—

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(3) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(4) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553) , it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt rules governing the first competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). This competition is the first CSR Quality Initiatives competition under section 1608 of the ESEA, as amended by Public Law 107–110, the No Child Left Behind Act of 2001, and therefore qualifies for this exemption. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards. These rules will apply to the FY 2002 grant competition only.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.332B), 7th & D Streets, SW., Room 3633, Regional Office Building 3, Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.332B), 7th and D Streets, SW., Room 3633, Regional Office Building #3, Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494. (3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains all required forms and instructions, including instructions for preparing the application narrative, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances and certifications, a list of relevant definitions from the authorizing statute and EDGAR, and a checklist for applicants.

To apply for an award under this competition, your application must be organized in the following order and include the following four parts. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (ED 424, Exp. 11/30/2004) and instructions.

Part II: Budget Information-Non-Construction Programs (ED Form No. 524) and instructions. An applicant for a multi-year project must provide a budget narrative that provides budget information for each budget period of the proposed project period.

Part III: Application Narrative.

Part IV: Assurances and Certifications: Assurances—Non—Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certifications regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL)(if applicable) and instructions.

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications as printed in this notice in the **Federal Register**. However, the application form, assurances, and certifications must each have an original signature. All applicants are required to submit ONE original signed application,

including ink signatures on all forms and assurances, and TWO copies of the application, one bound and one unbound copy suitable for photocopying. Please mark each application as ''original'' or ''copy''. To aid with the review of applications, the Department encourages applicants to submit two additional paper copies of the application. The Department will not penalize applicants who do not provide additional copies. No grant may be awarded unless a completed application form, including the signed assurances and certifications, has been received.

FOR FURTHER INFORMATION CONTACT: Dr. Irene Harwarth, (202) 401–3751, U.S. Department of Education, OESE/AITQ, FB–6, Room 2W104, 400 Maryland Ave., SW., Washington, DC 20202–6200. The e-mail address for Dr. Harwarth is: *irene.harwarth@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed.

Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have any questions about using PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free, at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 6518.

Dated: March 18, 2003.

Eugene W. Hickok,

Under Secretary of Education.

Appendix

Instructions for the Application Narrative

The narrative is the section of the application where the selection criteria used by reviewers in evaluating the application are addressed. The narrative must encompass each function or activity for which funds are being requested. Before preparing the application narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

Applicants should note there is a suggested 30-page limit for the application narrative with the following standards applying: (1) A ''page'' is 8.5″ × 11″ (one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative must be double-spaced. The suggested page limit does not apply to the cover sheet, the one-page abstract, budget section, appendices, and forms and assurances. However, all of the application narrative must be included in the narrative section.

1. Begin with a one-page Abstract summarizing the project, including a description of project objectives and activities and any partners in the application.

2. Include a table of contents listing the parts of the narrative in the order of the selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages.

3. Describe how the applicant meets the absolute priority (if applicable).

4. Describe how the applicant meets the competitive priority (if applicable).

5. Describe fully the proposed project in light of the selection criteria in the order in which the criteria are listed in the application package. Do not simply paraphrase the criteria.

6. Provide the following in response to the attached ''Notice to all Applicants'': (1) A reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains this information.

7. When applying for funds as a consortium, individual eligible applicants must enter into an agreement signed by all members. The consortium's agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the consortium's application. The designated applicant must submit the consortium's agreement with its application.

8. Applicants may include supporting documentation as appendices to the narrative. This material should be concise and pertinent to the competition. Note that the Secretary considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

9. Attach copies of all required assurances and forms.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is 1890–0009 (Expiration Date: 06/30/2005.) The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance (ED 424).

2. Budget Information—Non-Construction Programs ED Form No. 524) and budget narrative.

3. Application Narrative, including information that addresses section 427 of the General Education Provisions Act (*see* the section entitled ''Notice to all Applicants''), and relevant appendices.

4. Consortia agreement, if applicable.

5. Assurances—Non-Construction Programs (SF 424B).

6. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

7. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable).

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 -

Organizational Unit

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐
Title: _____
_____

5. Project Director: _____
Address: _____
_____ _____ _____
City State ZIP Code + 4 -
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication
☐ Construction
☐ Non-Construction
—Application
☐ Construction
☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date:

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	**2. Status of Federal Action:**	**3. Report Type:**
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:**
☐ **Prime** ☐ **Subawardee** Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

[FR Doc. 03–6859 Filed 3–20–03; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Friday,
March 21, 2003

Part VI

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1979

Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1979

RIN 1218–AB99

Procedures for the Handling of Discrimination Complaints under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations governing the employee protection (''whistleblower'') provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), a Federal Aviation Administration reauthorization bill, enacted into law April 5, 2000. This rule establishes procedures and time frames for the handling of complaints under AIR21, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (''OSHA''), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (''ALJ'') for a hearing de novo, hearings by ALJs, appeal of ALJ decisions to the Administrative Review Board (acting on behalf of the Secretary) and judicial review of the Secretary's final decision.

On April 1, 2002, OSHA published an interim final rule (67 FR 15454) which provided for rules of procedure and time frames to implement Section 519 of AIR21. At that time the agency requested comments concerning the interim final rules, and in response several comments were received from interested parties. OSHA has reviewed the comments and now adopts this final rule which has been revised in part to address problems perceived by the agency and the commenters.

DATES: This final rule is effective on March 21, 2003.

FOR FURTHER INFORMATION CONTACT: John Spear, Director, Office of Investigative Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3603, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2199.

SUPPLEMENTARY INFORMATION:

I. Background

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), Public Law 106–181, was enacted on April 5, 2000. Section 519 of the Act, codified at 49 U.S.C. 42121, provides protection to employees against retaliation by air carriers, their contractors and their subcontractors, because they provided information to the employer or the Federal Government relating to air carrier safety violations, or filed, testified, or assisted in a proceeding against the employer relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration (''FAA'') or any other law relating to the safety of air carriers, or because they are about to take any of these actions. These rules establish procedures for the handling of complaints under AIR21.

II. Summary of Statutory Provisions

The AIR21 whistleblower provisions include procedures which allow a covered employee to file, within 90 days of the alleged discrimination, a complaint with the Secretary of Labor (''the Secretary'').[1] Upon receipt of the complaint, the Secretary must provide written notice to both the person named in the complaint who is alleged to have violated the Act (''the named person'') and the FAA of: The allegations contained in the complaint, the substance of the evidence submitted with the complaint, and the rights of the named person throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the named person an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation. However, the Secretary may conduct an investigation only if the complainant has made a prima facie showing that the alleged discriminatory behavior was a contributing factor in the unfavorable personnel action alleged in the complaint and the named person has not demonstrated, through clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior. This provision is similar to the 1992 amendments to the ERA, codified at 42 U.S.C. 5851.

After investigating a complaint, the Secretary shall issue a determination letter. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that discriminatory behavior has occurred, the Secretary must notify the named person of those findings along with a preliminary order which requires the named person to: Abate the violation, reinstate the complainant to his or her former position and provide make-whole relief and compensatory damages to the complainant, as well as costs and attorney's and expert fees reasonably incurred. The complainant and the named person then have 30 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing on the record. The filing of objections under AIR21 shall stay any remedy in the preliminary order except for preliminary reinstatement. This provision for preliminary reinstatement after the investigation is similar to the employee protection provision of STAA, 49 U.S.C. 31105. If a hearing before an administrative law judge is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, AIR21 requires the hearing to be conducted ''expeditiously.'' The Secretary then has 120 days after the ''conclusion of a hearing'' in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, complainant and the named person may enter into a settlement agreement which terminates the proceeding. The Secretary shall assess against the named person, on the complainant's request, a sum equal to the total amount of all costs and expenses, including attorney's and expert witness fees, reasonably incurred by the complainant in bringing the complaint to the Secretary or in connection with participating in the proceeding which resulted in the order on behalf of the complainant. The Secretary also may award a prevailing employer an attorney's fee, not exceeding $1,000, if he or she finds that the complaint is or has been brought in bad faith. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation. Finally, AIR21 makes persons who violate these newly created whistleblower provisions subject to a

[1] Responsibility for receiving and investigating these complaints has been delegated to the Assistant Secretary for OSHA. Secretary's Order 5–2002 (67 FR 65008, October 22, 2002); Secretary's Order 1–2002 (67 FR 64272, October 17, 2002). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the Administrative Review Board. See Secretary's Order 1–2002.

civil penalty of up to $1,000. This provision is administered by the FAA.

III. Summary of Regulations and Rulemaking Proceedings

On April 1, 2002, the Occupational Safety and Health Administration published in the **Federal Register** an interim final rule promulgating rules which implemented Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181, 67 FR 15454—15461. In addition to promulgating the interim final rule, OSHA's notice included a request for public comment on the interim rules by May 31, 2002. On May 29, 2002, OSHA received a request from the Association of Flight Attendants requesting a 30-day extension of the comment period, and on June 13, 2002, OSHA published a notice in the **Federal Register** extending the comment period to June 30, 2002, 67 FR 40597.

In response, six organizations filed comments with the agency. Comments were received from the Association of Flight Attendants (AFA); the Air Line Pilots Association (ALPA); the Transportation Trades Department, AFL–CIO (TTD); the Air Transport Association (ATA); the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO); and the National Whistleblower Legal Defense and Education Fund on behalf of the National Whistleblower Center (NWC). Senator Charles Grassley of Iowa also submitted comments.

OSHA has reviewed the comments and, in response, has developed a final rule which makes some changes in the interim final rule. Other changes urged by commenters were considered but rejected. OSHA addresses the comments in the discussion that follows. The comments and OSHA's response are discussed in the order of the provisions of the rule.

General Comments

OSHA received four comments of a general nature relating to the regulations. The AFL–CIO questioned whether the interim procedures related to filing of complaints, processing of investigations and conduct of administrative reviews satisfy the following four requirements which, in its opinion, are needed to meet the intent of Congress:

(1) Whistleblowers must have control of their legal cases through an Individual Right of Action;

(2) The investigating and prosecuting authority must not have discretionary authority that may be abused to undermine the legal interests of complainants;

(3) Loopholes that allow illegal employer conduct or circumscribe the protected acts of complainants must be eliminated; and

(4) Legal burdens of proof for whistleblowers must be realistic.

OSHA believes that, as a general matter, the interim rules provide for administrative and judicial review procedures and burdens of proof required by AIR21 and fully satisfy the spirit and intent of Congress to provide whistleblower protection to aviation workers, thus helping to increase the safety of the aviation industry and the traveling public.

The NWC suggested that OSHA posters be amended to inform employees of all the whistleblower laws administered by OSHA; or, in the alternative, OSHA should make posters regarding employee rights under all the whistleblower laws widely available free of charge to the regulated community and encourage employers to comply with the law and voluntarily post notice of the law. OSHA believes that posters and other means or informing employers and employees of their rights and responsibilities under the various whistleblower statutes are vital to achieving the goals of the statutes, although AIR21 does not authorize OSHA to require employers to post notice of the law. However, the FAA has developed and distributed posters and other informational materials to airport authorities, employers and employee groups around the country.

The ATA submitted three general comments regarding the nature of the relationship between OSHA and the FAA. The ATA suggested that the rules be modified to provide that (1) the FAA has complete and exclusive jurisdiction over air carrier safety issues, (2) when OSHA receives an AIR21 discrimination complaint, the FAA must first make a threshold determination as to whether the underlying safety issues raised by the complaint relate to a violation, and (3) throughout any investigation by OSHA, the FAA retains exclusive authority to determine any air carrier safety issues underlying or related to the discrimination complaint. With respect to the first and third comments, OSHA agrees that the FAA has authority over air carrier safety issues as defined by statute. OSHA does not agree, however, that AIR21 provides that it is the FAA's responsibility to first make a threshold determination as to whether the underlying safety issues raised by the complainant relates to an air carrier safety violation. That initial, threshold determination of whether the complainant engaged in activities protected by the law is common to all the various whistleblower statutes and is made by OSHA in the regular course of determining a prima facie showing that protected conduct was a contributing factor in the alleged unfavorable personnel action.

Section 1979.100 Purpose and Scope

This section describes the purpose of the regulations implementing AIR21 and provides an overview of the procedures covered by these new regulations. No comments were received relating to this section.

Section 1979.101 Definitions

In addition to the general definitions, the regulations include program-specific definitions of ''air carrier'' and ''contractor.'' The statutory definition of ''air carrier'' applicable to AIR21 is found at 49 U.S.C. 40102(a)(2), a general definitional provision applicable to air commerce and safety. The statutory definition of ''contractor'' is found in AIR21 at 49 U.S.C. 42121(e).

Four comments were received regarding the definitions contained in § 1979.101. The NWC proposed that the term ''air carrier'' include those carriers owned by foreign persons, stating that it would be inconsistent with safety and national security to exclude from protection whistleblowers who uncovered and disclosed problems related to air carriers which may happen to be owned or controlled by foreign corporations or persons. AIR21 is contained in Title 49, Subtitle VII, Part A, of the United States Code. While AIR21 contains a definition of ''contractor,'' it does not contain a definition of ''air carrier'' and so the general definitions applicable to Part A contained in Subpart 1 apply. The terms ''air carrier'' and ''foreign air carrier'' are separately defined by statute at 49 U.S.C. 40102(a)(2) (''air carrier'') and 49 U.S.C. 40102(a)(21) (''foreign air carrier''), and the general definition of air carrier is set forth in the AIR21 rule. OSHA has no authority to define the terms otherwise.

The NWC also stated that the definition of the term ''contractor'' should be further explained to ensure that the definition include all contractors which perform, directly or indirectly, any function whatsoever which may have safety implications, and that safety-sensitive functions specifically include security related activities. The NWC suggested that the definition of ''safety-sensitive'' should include persons who work for

contractors who are in a position to witness and or identify the misconduct of other employees or contractors as opposed to reporting only on the employee's own employer. OSHA agrees that ''safety-sensitive functions'' include security-related activities, but believes that the definition as written is adequate.

The AFA commented that the terms ''contractors, subcontractors, or agents or air carriers'' be added to the definition of ''person.'' The term ''person'' is included in the definitions because it is used variously in the statute to mean both organizations and individuals. The definition describes what type of legal entities may be included in the term ''person.''

Section 1979.102 Obligations and Prohibited Acts

This section describes the whistleblower activity which is protected under the Act and the type of conduct which is prohibited in response to any protected activity.

The NWC commented that § 1979.102(b) should explicitly include reports of security violations or reports of security weaknesses made to the employer or a law enforcement agency in the definition of protected activity. OSHA believes that the regulation appropriately sets forth the statutory definition of protected activity, which includes providing ''information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States.'' Therefore, OSHA does not believe that the additional language requested is necessary.

The AFA suggested that the words ''actively or passively'' be added to § 1979.102(b) to clarify that all forms of discrimination, whether active or passive, are violations of the Act. The AFA also recommended that the words ''actual or constructive'' be added before the word ''knowledge'' in § 1979.102(b)(1) and (2) to prevent an employer from making a ''don't want to know'' plausible deniability argument to escape accountability for violating the Act. OSHA considers that extensive case law exists involving analogous language in other employee protection statutes. Therefore, OSHA anticipates that similar interpretations would be applied under AIR21.

The NWC recommended that § 1979.102(c) be further defined, in order to prevent a chilling effect on employee disclosures, by stating that the term ''deliberate'' does not apply to unintentional conduct. There is case law involving analogous provisions of other employee protection statutes defining the phrase ''deliberate violations'' for purposes of denying protection to an employee who causes a violation of applicable safety laws. *See, e.g., Fields* v. *United States Department of Labor Administrative Review Board,* 173 F.3d 811, 814 (11th Cir. 1999) (''petitioners moved knowingly and dangerously beyond their authority when, on their own, and fully aware that their employer would not approve, they conducted experiments inherently fraught with danger''). We anticipate that a similar construction of that term would be applied under AIR21.

Section 1979.103 Filing of Discrimination Complaint

This section explains the requirements for filing a discrimination complaint. Under AIR21, to be timely a complaint must be filed within 90 days of the alleged violation. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this date is considered to be when the discriminatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Employment Opportunity Commission* v. *United Parcel Service,* 249 F.3d 557, 561–62 (6th Cir. 2001). Under § 1979.103(a), complaints may be made by any person on the employee's behalf with the consent of the employee.

Section 1979.103(b) of the interim rule permitted complaints to be made both in writing and orally. The rule has been changed to require that complaints be made in writing, which shall include a full statement of the acts and omissions alleged to constitute the violation, in accordance with the procedures for filing whistleblower complaints under several other employee protection provisions for which the Secretary of Labor has delegated the responsibility for enforcement to OSHA. Complaints still do not need to be made in accordance with any particular form. However, because of difficulty encountered in the processing of oral complaints, OSHA has determined that the process for filing full complaints in writing codified at 29 CFR 24.3(c) should apply to whistleblower complaints filed under AIR21.

The AFA commented that § 1979.103(c) should be changed to include the Federal Aviation Administration as a place where complaints may be sent because the FAA website advised that whistleblower complaints may be filed with the FAA. Similarly, the NWC proposed that § 1979.103.(c), (d) and (e) should make clear that whistleblower complaints filed with other agencies should be deemed timely filed, particularly when the underlying safety concern was originally directed to the other agency. The NWC also commented that an internal whistleblower complaint to the employer should also act to toll the AIR21 statute of limitations. OSHA wants to make clear in the regulations that claims should preferably be filed with OSHA. However, as noted in OSHA's Whistleblower Investigations Manual (OSHA Instruction DIS 0–0.8), it is OSHA's policy, as supported by case law, that complaints timely filed by mistake with the FAA or other agency not having the authority to grant relief to the whistleblower may be considered timely filed with OSHA. The reference to filing with ''any Department of Labor officer or employee'' has been changed to ''any OSHA officer or employee'' to make the rule consistent with other whistleblower rules administered by OSHA.

The ATA commented that § 1979.103(e) should be deleted in its entirety because OSHA states no legal authority for the provision, individuals may intentionally file under one statute and not the other, and the section is vague because it does not make clear which statutory process OSHA will follow. The purpose of § 1979.103(e) is to make clear to the regulated community that OSHA reserves the right to investigate any whistleblower claim that properly falls under OSHA's purview. Section 11(c) of the Occupational Safety and Health Act (''OSH Act'') provides employment protection for employees who exercise certain rights under the OSH Act, principal among them being the right to file an occupational safety and health complaint with OSHA within 30 days of the alleged violation. Section 11(c), unlike STAA and ERA, does not provide for an administrative determination of the merits of a complaint by the Secretary; instead, the Secretary of Labor may seek to bring an action in Federal District Court to enforce the whistleblower protection provision of the OSH Act. Section 1979.103(e), which is comparable to a provision in the STAA regulations (see § 1978.102(e)), puts the community on notice that OSHA considers all complaints filed with it as potential complaints under Section 11(c) if it should turn out in the course of the investigation that the underlying

protected safety or health activity falls under OSHA's authority rather than that of the FAA. The final rule also clarifies that the requirements of Section 11(c) necessarily apply to complaints that OSHA treats as having been filed under the OSH Act, and that the requirements of AIR21 apply to complaints that OSHA treats as having been filed under AIR21.

Section 1979.104 Investigation

AIR21 contains a requirement similar to the requirement in the ERA that a complaint shall be dismissed if it fails to make a prima facie showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Also included in this section is the AIR21 requirement that an investigation of the complaint will not be conducted if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct, notwithstanding the prima facie showing of the complainant. Under this section, the named person has the opportunity within 20 days of receipt of the complaint to meet with representatives of OSHA and present evidence in support of his or her position.

If, upon investigation, OSHA has reasonable cause to believe that the named person has violated the Act and therefore that preliminary relief for the complainant is warranted, OSHA again contacts the named person with notice of this determination and provides the substance of the relevant evidence upon which that determination is based, consistent with the requirements of confidentiality of informants. The named person is afforded the opportunity, within ten business days, to provide written evidence in response to the allegation of the violation, meet with the investigators, and present legal and factual arguments why preliminary relief is not warranted. This provision provides due process procedures in accordance with the Supreme Court decision under STAA in *Brock* v. *Roadway Express, Inc.,* 481 U.S. 252 (1987). In addition, we clarified that the ten-day time period refers to ten business days. This is consistent with the Federal Rules of Civil Procedure 6(a), which excludes from the computation of the period of time intermediate Saturdays, Sundays, and legal holidays, when the period of time prescribed or allowed is less than 11 days.

In a comment submitted by the AFA, it was suggested that § 1979.104(a) be revised to require the Assistant Secretary to notify both the named person and the complainant of the filing of the complaint and their rights under the Act. However, the statutory language only requires that the named person be notified in writing. As a matter of policy, OSHA does acknowledge receipt of the complaint in writing back to the complainant.

The ATA commented that § 1979.104.(b) should be modified to make clear that if OSHA initiates an investigation, but later concludes that the complainant has failed to establish a prima facie case or that the respondent has rebutted the prima facie case, the agency should terminate the investigation. This comment misapprehends OSHA's practice and the intent of the rule. If, at any point in the investigation, it becomes clear that a prima facie showing cannot be established or that the evidence otherwise reveals that the complaint lacks merit, OSHA will dismiss the complaint.

The TTD, NWC, AFA, and Senator Grassley all commented that § 1979.104(b)(1)(iv) and (b)(2) should be changed to more accurately reflect the language of the statute in describing the complainant's burden of proof. The commenters felt that the use of the word ''likely'' effectively changed the intent of the statutory language placing on the complainant the burden to demonstrate that the protected activity ''was a contributing factor in the unfavorable personnel action alleged in the complaint.'' OSHA agrees that the language of the interim rule could be construed to alter or otherwise inaccurately reflect the language of the statute, and has changed it by deleting the word ''likely.''

The AFA suggested that § 1979.104(c) be changed to require the Assistant Secretary to share documents submitted by the named person with the complainant and to allow the complainant to be present during the initial meeting with the named person, if requested. OSHA believes that, consistent with other whistleblower laws, the language of the statute is clear that the initial investigation by OSHA is to be conducted independently for the purpose of establishing the factual circumstances and facilitating an early resolution of the claim.

The ATA recommended that § 1979.104(c) be changed to lengthen the named person's response time from ten days to 30 days. ATA felt that ten days is not enough time to research and provide an appropriate response that is substantial enough to make the required demonstration by ''clear and convincing evidence.'' OSHA agrees that ten days may frequently be a very short time to effectively research and prepare a response. However, because the statute provides only 60 days for OSHA to complete the entire investigation and issue findings, OSHA believes that allowing half that time for submitting an initial response will impede its ability to complete the investigation in a timely manner. The final rule is changed to permit 20 days for submitting an initial response and a request for a meeting, which is also consistent with other whistleblower statutes having a 60-day investigation time frame.

The AFA suggested that § 1979.104(d) be modified to delete the words, ''other than the complainant'' from the last sentence to ensure confidentiality for all persons, including the complainant. This rule is intended to affirmatively provide for the protection of the identity of persons who come forward to OSHA to provide information or testimony relevant to OSHA's investigation of the whistleblower complaint. The phrase is not intended to limit or restrict in any way OSHA's ability to appropriately withhold information or documentation provided by the complainant which would ordinarily be exempt from disclosure under the provisions of the Freedom of Information Act.

The AFA also suggested that § 1979.104(e) be changed to require that when the Assistant Secretary concludes that reinstatement is warranted, the complainant, as well as the named person, be contacted to give notice of the substance of the evidence supporting the complainant's claim and an opportunity to be present in any subsequent meeting. The NWC recommended that § 1979.104(e) be deleted in its entirety because a second review of the respondent's position unnecessarily delays the investigation. As noted above, it is OSHA's position that OSHA's investigation is conducted independently prior to the administrative hearing phase of the process, in which all parties participate fully. The purpose of § 1979.104(e) is to ensure compliance with the Supreme Court's ruling in *Brock* v. *Roadway Express, Inc.,* 107 S. Ct. 1740 (1987), in which the court, on a constitutional challenge to the temporary reinstatement provision in the employee protection provisions of the Surface Transportation Assistance Act (now codified at 49 U.S.C. 31105), upheld the facial constitutionality of the statute and the procedures adopted by OSHA under the Due Process Clause of the Fifth Amendment, but ruled that the record

failed to show that OSHA investigators had informed Roadway of the substance of the evidence to support reinstatement of the discharged employee.

Section 1979.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue a finding regarding whether or not the complaint has merit. If the finding is that the complaint has merit, the Assistant Secretary will order appropriate preliminary relief. The letter accompanying the findings and order advises the parties of their right to file objections to the findings of the Assistant Secretary. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final findings and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed. The language of § 1979.105(c) has been changed to explain this process without repeating the discussion in § 1979.106(b).

The AFA commented that § 1979.105(a) should be modified to require the awarding of attorney's fees to the complainant and to provide only to the complainant a written summary of the relevant facts obtained when a complaint is dismissed. OSHA believes that it is obligated under the law to provide written findings to both parties regardless of the outcome of the investigation. OSHA agrees that the statutory language requires the Secretary to award reasonable attorney's fees, and the language of the regulation has been changed accordingly.

The ATA commented that § 1979.105(a) should be modified to make clear that OSHA should not order preliminary reinstatement of an employee involved in air carrier operations if the individual poses a safety risk to employees or passengers. The ATA felt that it was possible in certain situations that OSHA might reasonably conclude that a complainant should be reinstated, but that the complainant's return to work could pose a safety hazard to other employees or the public. AIR21 only permits issuance of a preliminary order granting reinstatement if there is reasonable cause to believe that a violation has occurred. Section 1979.104(e) provides opportunities for the named person to present evidence to OSHA that the complainant would have been discharged even in the absence of his or her protected activity. Where the named party establishes that the complainant would have been discharged even absent the protected activity, there would be no reasonable cause to believe that a violation has occurred. Therefore, a preliminary restatement order would not be issued.

Furthermore, a preliminary order of reinstatement would not be an appropriate remedy where, for example, the named party establishes that the complainant is, or has become, a security risk based upon information obtained after the complainant's discharge in violation of AIR21's employee protection provision. See *McKennon* v. *Nashville Banner Publishing Co.,* 513 U.S. 352, 360–62 (1995), in which the Supreme Court recognized that reinstatement would not be an appropriate remedy for discrimination under the Age Discrimination in Employment Act where, based upon after-acquired evidence, the employer would have terminated the employee upon lawful grounds. The final regulation explicitly so provides. Moreover, because section 1979.105(a) provides that the Assistant Secretary's preliminary order will require reinstatement, along with the other make-whole remedies, ''where appropriate,'' we believe that the regulations provide safeguards that address ATA's legitimate security-risk concerns. Finally, in appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he received prior to his termination, but not actually return to work. Such ''economic reinstatement'' frequently is employed in cases arising under section 105(c) of the Federal Mine Safety and Health Act of 1977. See, *e.g.*, *Secretary of Labor on behalf of York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020 **1 (June 26, 2001).

The AFA suggested that § 1979.105(b) should be changed to require the named person to produce proof of attorney's fees and to provide the evidence directly to the complainant in cases where OSHA finds that a complaint is frivolous or brought in bad faith. The NWC commented that such sanctions against the complainant should not be available during the investigation phase. In consideration of the comments presented and OSHA's own re-evaluation of the statutory language, OSHA has deleted the paragraph delegating to OSHA responsibility for assessing attorney's fees up to $1,000 during the investigation phase for complaints frivolously filed or filed in bad faith (§ 1979.105(b)). The remaining paragraphs of this section have been renumbered. The named person may seek attorney's fees for complaints filed frivolously or in bad faith in the administrative law judge proceeding as provided in § 1979.106(a). Such attorney's fees may be sought for fees incurred during the investigation of a frivolous complaint, even where the Assistant Secretary finds no merit to the complaint and the complainant does not file any objection to the determination. See § 1979.105(b) and § 1979.109(b). The named person also may seek attorney's fees as provided in § 1979.110(a), in a petition for review by the Board. See § 1979.110(e).

Section 1979.106 Objections to the Findings and the Preliminary Order

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, D.C. within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or e-mail communication is considered the date of the filing. The filing of objections is also considered a request for a hearing before an ALJ. The language of § 1979.106(b) has been changed to explain the effect of the timely filing of objections on the preliminary order without repeating the discussion in § 1979.105(c).

The NWC commented that in § 1979.106(a) the requirement that a party needs to file ''objections'' at the time a request for hearing is filed should be deleted. The basis for the comment was that other whistleblower regulations do not require it and that unnecessary litigation may result over the adequacy of the objections rather than the merits of the case. OSHA has considered this concern and believes that the rules as drafted are correct and consistent with the language of the statute. It is not expected that a party's list of objections needs to be exhaustive at the time of the initial request for hearing. A named person may seek attorney's fees for the filing of a frivolous complaint or a complaint filed in bad faith when filing any objections and a request for a hearing.

The NWC also felt that § 1979.106(b)(1) should require that all of the remedies of a preliminary order be immediately effective, rather than just the reinstatement portion, when the employee prevails at the investigative stage. OSHA believes that such an interpretation is clearly inconsistent with the statutory language which states that objections shall not operate to stay any reinstatement remedy contained in the preliminary order.

Section 1979.107 Hearings

This section adopts the rules of practice of the Office of Administrative Law Judges at 29 CFR Part 18, Subpart A. In order to assist in obtaining full development of the facts in whistleblower proceedings, formal rules of evidence do not apply. The section specifically provides for consolidation of hearings if both the complainant and the named person object to the findings and order of the Assistant Secretary.

The ALPA commented that a new subsection should be added to § 1979.107 setting forth the standard of proof to be used by the administrative law judges at hearing. OSHA believes that the statute clearly sets forth the criteria for determination by the Secretary, and additional clarification is not necessary.

Section 1979.108 Role of Federal Agencies

The ERA and STAA regulations provide two different models for agency participation in administrative proceedings. Under STAA, OSHA ordinarily prosecutes cases where a complaint has been found to be meritorious. Under ERA and the other environmental whistleblower statutes, on the other hand, OSHA does not ordinarily appear as a party in the proceeding. The Department has found that in most environmental whistleblower cases, parties have been ably represented and the public interest has not required the Department's participation. Therefore this provision utilizes the approach of the ERA regulation at 29 CFR 24.6(f)(1). The Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an administrative law judge; petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the Administrative Review Board proceeding. Although we anticipate that ordinarily the Assistant Secretary will not participate in AIR21 proceedings, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The FAA, at that agency's discretion, also may participate as amicus curiae at any time in the proceedings. The Department believes it is unlikely that its preliminary decision not to ordinarily prosecute meritorious AIR21 cases will discourage employees from making complaints about air carrier safety.

Four comments were received regarding § 1979.108(a)(1). The TTD and the AFA commented that the regulation should explicitly provide that the Assistant Secretary shall act only in the interests of the complainant at any hearings. The ALPA commented that the Assistant Secretary should always act as prosecutor at any hearing before the ALJ or review by the Board. The AFA commented that the Assistant Secretary should act as prosecutor only at the request of the complainant. And the ATA supported the section as written and commented that the Assistant Secretary should limit participation to those few cases that present issues of such particular legal significance to the agency as to warrant participation. In consideration of all the comments received it is OSHA's determination to leave the language of this rule as written. The Assistant Secretary may participate as a party or may participate as amicus curiae as he or she may deem necessary or appropriate.

Section 1979.109 Decision of the Administrative Law Judge

This section sets forth the content of the decision and order of the administrative law judge, and includes the statutory standard for finding a violation. The section further provides that the Assistant Secretary's determination to dismiss the complaint without an investigation or complete an investigation pursuant to § 1979.104 is not subject to review. Paragraph (a) of this section has been clarified to state expressly that the Assistant Secretary's determinations on whether to proceed with an investigation and to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears the case on the merits, and may not remand the matter to the Assistant Secretary to conduct an investigation or make further factual findings. Paragraph (c) of this section has been changed to make the ALJ decision effective ten business days after the date on which it was issued, unless a timely petition for review has been filed with the Administrative Review Board, to conform with the change in § 1979.110(a), which provides ten business days instead of ''15 days'' from the date of the ALJ decision for the filing of a petition for review.

The AFA commented that § 1979.109(b) should be changed to require the administrative law judge to provide the complainant with any evidence of the named person's attorney's fees and to formally advise the complainant that the decision to award fees may be appealed. OSHA does not believe this language is necessary because the right of either party to appeal the administrative law judges' decisions is explained in the subsequent section, to wit, § 1979.110.

The NWC commented that § 1979.109(c) should be modified to reflect that the administrative law judges do not have statutory authority to lift the Assistant Secretary's preliminary order of reinstatement. OSHA does not believe that the proposed change can be supported by the language of the statute.

Section 1979.110 Decision of the Administrative Review Board

The decision of the ALJ is the final decision of the Secretary if no timely petition for review is filed with the Administrative Review Board. Upon the issuance of the ALJ's decision, the parties may petition the Board for review of that decision. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. Paragraph (a) of this section has been modified to facilitate the review process by stating expressly that the parties must specifically identify the findings and conclusions to which they take exception in the petition, or the exceptions are deemed waived by the parties.

Paragraphs (a) and (b) also have been modified to provide that appeals to the Board are not a matter of right, but rather petitions for review are accepted at the discretion of the Board. The Board has 30 days to decide whether to grant the petition for review. If the Board does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If the Board grants the petition, the Act requires the Board to issue a decision not later than 120 days after the date of the conclusion of the hearing before the ALJ. The conclusion of the hearing is deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, ten business days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. If a timely petition for review is filed with the

Board, any relief ordered by the ALJ, except for a preliminary order of reinstatement, is inoperative while the matter is pending before the Board. This section now further provides that, when the Board accepts a petition for review, its review of factual determinations will be conducted under the substantial evidence standard. This standard also is applied to Board review of ALJ decisions under the whistleblower provision of STAA. 29 CFR 1978.109(b)(3).

The AFA recommended that § 1979.110(a) be changed to state that a petition for review must be filed with the ARB within ten days, rather than received by the Board within 15 days to allow either party sufficient time to file without being penalized by inconsistent postal delivery. OSHA agrees that, due to the vagaries of postal delivery, the date of filing as described in this section rather than the date of the Board's receipt of the petition should be used to determine whether a petition is timely, and that ten days is sufficient time to petition for review of an ALJ decision. Only business days shall be counted in the ten days allowed for filing a petition, consistent with the Federal Rules of Civil Procedure 6(a), and paragraph (a) of this section has been changed to clarify the change from ''15'' to ''ten'' days.

The AFA also recommended that § 1979.110(c) be changed to avoid undue delay by providing that the administrative law judge's decision becomes the final order of the Secretary after 120 days if the Administrative Review Board fails to act within the 120 days. OSHA agrees that the procedure for Board review of an ALJ decision should be modified to avoid delay and prejudice to the parties, and to facilitate the issuance of a final order of the Secretary as required by the Act. The modifications to the Board review procedure in paragraphs (a) and (b) of this section, *i.e.*, discretionary review by the Board, which shall accept as conclusive ALJ findings of fact that are supported by substantial evidence, address the concerns expressed by the AFA, and the recommended change to paragraph (c) of this section is not necessary.

Section 1979.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings. It also provides for approval of settlements at the investigatory and judicial stages of the case.

The NWC commented that § 1979.111 should be modified to permit a complainant to freely withdraw his or her complaint without prejudice. OSHA believes that § 1979.111 does permit a complainant to freely withdraw his or her complaint without prejudice. The purpose of the Assistant Secretary's approval is to help ensure that the complainant's withdrawal is, indeed, made freely without threat of coercion or unlawful promise.

Section 1979.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1979.113 Judicial Enforcement

This section describes the Secretary's power under the statute to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued.

Section 1979.114 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the Secretary may, upon application and notice to the parties, waive any rule as justice or the administration of the Act requires.

The NWC commented that § 1979.114 should be deleted in its entirety because it has no basis in the statutory language. OSHA believes that the regulation should remain to give the administrative law judges and the Administrative Review Board the flexibility to take actions in unusual situations that are not contemplated by the regulations.

IV. Paperwork Reduction Act

This rule contains a reporting requirement (§ 1979.103) which was previously reviewed and approved for use by the Office of Management and Budget (''OMB'') under 29 CFR 24.3 and assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

This rule is a rule of agency procedure and practice within the meaning of Section 553 of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(A). Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments was not required for these regulations, which provide procedures for the handling of discrimination complaints. However, the Assistant Secretary sought and considered comments to enable the agency to improve the rules by taking into account the concerns of interested persons.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132.

The Department has concluded that this rule should be treated as a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866 because AIR21 is a new program and because of the importance to FAA's airline safety program that ''whistleblowers'' be protected from retaliation. E.O. 12866 requires a full economic impact analysis only for ''economically significant'' rules, which are defined in Section 3(f)(1) as rules that may ''have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a ''rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and does not require Congressional review. Finally, this rule does not have ''federalism implications.'' The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of AIR21, in order to allow resolution of whistleblower complaints. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1979

Administrative practice and procedure, Air carrier safety, Employment, Investigations, Reporting and recordkeeping requirements, Whistleblowing.

Signed at Washington, DC this 17th day of March, 2003.

John L. Henshaw,

Assistant Secretary for Occupational Safety and Health.

Accordingly, for the reasons set out in the preamble part 1979 of title 29 of the Code of Federal Regulations is revised to read as follows:

PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.

Subpart B—Litigation

Subpart C—Miscellaneous Provisions

Authority: 49 U.S.C. 42121; Secretary of Labor's Order 5–2002, 67 FR 65008 (October 22, 2002).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1979.100 Purpose and scope.

(a) This part implements procedures under section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121 (''AIR21''), which provides for employee protection from discrimination by air carriers or contractors or subcontractors of air carriers because the employee has engaged in protected activity pertaining to a violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety.

(b) This part establishes procedures pursuant to AIR21 for the expeditious handling of discrimination complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under AIR21, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1979.101 Definitions.

Act or *AIR21* means section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181, April 5, 2000, 49 U.S.C. 42121.

Air carrier means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

Complainant means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

Contractor means a company that performs safety-sensitive functions by contract for an air carrier.

Employee means an individual presently or formerly working for an air carrier or contractor or subcontractor of an air carrier, an individual applying to work for an air carrier or contractor or subcontractor of an air carrier, or an individual whose employment could be affected by an air carrier or contractor or subcontractor of an air carrier.

Named person means the person alleged to have violated the Act.

OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

Person means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any group of persons.

Secretary means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1979.102 Obligations and prohibited acts.

(a) No air carrier or contractor or subcontractor of an air carrier may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.

(b) It is a violation of the Act for any air carrier or contractor or subcontractor of an air carrier to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because the employee has:

(1) Provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the air carrier or contractor or subcontractor of an air carrier or the Federal Government, information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under subtitle VII of title 49 of the United States Code or under any other law of the United States;

(2) Filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under subtitle VII of title 49 of the United States Code, or under any other law of the United States;

(3) Testified or is about to testify in such a proceeding; or

(4) Assisted or participated or is about to assist or participate in such a proceeding.

(c) This part shall have no application to any employee of an air carrier, contractor, or subcontractor who, acting without direction from an air carrier, contractor, or subcontractor (or such person's agent) deliberately causes a violation of any requirement relating to air carrier safety under Subtitle VII Aviation Programs of Title 49 of the United States Code or any other law of the United States.

§ 1979.103 Filing of discrimination complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by an air carrier or contractor or subcontractor of an air carrier in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) *Nature of filing.* No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 90 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery, or other means, the complaint is filed upon receipt.

(e) *Relationship to section 11(c) complaints.* A complaint filed under AIR21 that alleges facts which would constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), shall be deemed to be a complaint filed under both AIR21 and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would constitute a violation of AIR21 shall be deemed to be a complaint filed under both AIR21 and section 11(c). Normal procedures and timeliness requirements for investigations under the respective laws and regulations will be followed.

§ 1979.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary will also notify the named person of his or her rights under paragraphs (b) and (c) of this section and paragraph (e) of § 1979.110. A copy of the notice to the named person will also be provided to the Federal Aviation Administration.

(b) A complaint of alleged violation will be dismissed unless the complainant has made a prima facie showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint will not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within 20 days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating his or her position. Within the same 20 days the named person may request a meeting with the Assistant Secretary to present his or her position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, the Assistant Secretary will conduct an investigation. Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with 29 CFR part 70.

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1979.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The named person shall be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of his or her position, and to present legal and factual arguments. The named person shall present this evidence within ten business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named

person can agree, if the interests of justice so require.

§ 1979.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. Where the named person establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), a preliminary order of reinstatement would not be appropriate. At the complainant's request the order shall also assess against the named person the complainant's costs and expenses (including attorney's and expert witness fees) reasonably incurred in connection with the filing of the complaint.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

(c) The findings and the preliminary order shall be effective 30 days after receipt by the named person pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided at § 1979.106. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon receipt of the findings and preliminary order.

Subpart B—Litigation

§ 1979.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to paragraph (b) of § 1979.105. The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b)(1) If a timely objection is filed, all provisions of the preliminary order shall be stayed, except for the portion requiring preliminary reinstatement. The portion of the preliminary order requiring reinstatement shall be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, shall become the final decision of the Secretary, not subject to judicial review.

§ 1979.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, of 29 CFR part 18.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted as hearings de novo, on the record. Administrative law judges shall have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

§ 1979.108 Role of Federal agencies.

(a)(1) The complainant and the named person shall be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or may participate as amicus curiae at any time in the proceedings. This right to participate shall include, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, to dismiss a complaint or to issue an order encompassing the terms of the settlement.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The FAA may participate as amicus curiae at any time in the proceedings, at the FAA's discretion. At the request of the FAA, copies of all pleadings in a case must be sent to the FAA, whether or not the FAA is participating in the proceeding.

§ 1979.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in

paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1979.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge shall hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order shall direct the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the administrative law judge shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding $1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary shall be effective immediately upon receipt of the decision by the named person, and may not be stayed. All other portions of the judge's order shall be effective ten business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the administrative law judge shall become the final order of the Secretary unless the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard.

(c) The final decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, ten business days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed with the administrative law judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred.

(e) If the Board determines that the named person has not violated the law, an order shall be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1979.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether the withdrawal will be approved. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 30-day objection period described in § 1979.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or

order will begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement shall be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, shall constitute the final order of the Secretary and may be enforced pursuant to § 1979.113.

§ 1979.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board under § 1979.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1979.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1979.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties and interveners, waive any rule or issue any orders that justice or the administration of the Act requires.

[FR Doc. 03–6792 Filed 3–20–03; 8:45 am]

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Federal Register

Friday,
March 21, 2003

Part VII

Department of Justice

Drug Enforcement Agency

21 CFR 1308

Clarification of Listing of "Tetrahydrocannabinols" in Schedule I and Exemption From Control of Certain Industrial Products and Materials Derived From the Cannabis Plant; Final Rules

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–205F]

RIN 1117–AA55

Clarification of Listing of ''Tetrahydrocannabinols'' in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is revising the wording of the DEA regulations to clarify that the listing of ''Tetrahydrocannabinols'' (THC) in schedule I of the Controlled Substances Act (CSA) and DEA regulations refers to both natural and synthetic THC.

DATES: This final rule becomes effective on April 21, 2003.

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SUPPLEMENTARY INFORMATION:

What Does This Rule Accomplish and by What Authority Is It Being Issued?

This final rule clarifies that, under the CSA and DEA regulations, the listing of ''Tetrahydrocannabinols'' in schedule I refers to both natural and synthetic THC.

This rule is being issued pursuant to 21 U.S.C. 811, 812, and 871(b). Sections 811 and 812 authorize the Attorney General to establish the schedules in accordance with the CSA and to publish amendments to the schedules in the Code of Federal Regulations, part 1308 of title 21. Section 871(b) authorizes the Attorney General to promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient enforcement of his functions under the CSA. These functions vested in the Attorney General by the CSA have been delegated to the Administrator and Deputy Administrator of DEA. 21 U.S.C. 871(a); 28 CFR 0.100(b) and 0.104, appendix to subpart R, sec. 12.

Why Is There A Need To Clarify The Meaning of ''Tetrahydrocannabinols''?

As DEA explained in its October 9, 2001 interpretive rule (66 FR 51530; hereafter ''interpretive rule''), it is DEA's interpretation of the plain language of the CSA and DEA regulations that the listing of ''Tetrahydrocannabinols'' in schedule I refers to both natural and synthetic THC. Despite the wording of the statute, some members of the public were under the impression (prior to the publication of the interpretive rule) that the listing of ''Tetrahydrocannabinols'' in schedule I includes only synthetic THC—not natural THC. To eliminate any uncertainty, DEA is hereby revising the wording of its regulations to refer expressly to both natural and synthetic THC.

Why Should Natural THC Be Considered a Controlled Substance?

There are several reasons why natural THC should be considered a controlled substance. First, as explained in the interpretive rule, it is evident from the plain language of the CSA that Congress intended all THC—natural or synthetic—to be a schedule I controlled substance. Congress did so by listing ''Tetrahydrocannabinols'' in schedule I of the CSA—without limiting ''Tetrahydrocannabinols'' to either natural or synthetic form. 21 U.S.C. 812(c), Schedule I(c)(17). The basic dictionary definition of the word ''tetrahydrocannabinols'' refers collectively to a category of chemicals—regardless of whether such chemicals occur in nature or are synthesized in the laboratory.[1]

Second, every molecule of THC has identical physical and chemical properties and produces identical psychoactive effects, regardless of whether it was formed in nature or by laboratory synthesis.[2] Likewise, a product that contains THC in a given formulation will cause the same reaction to the human who ingests it regardless of whether the THC is natural or synthetic. Indeed, some researchers are currently investigating the possibility of using natural THC (extracted from cannabis plants) in drug products.[3]

Third, regardless of its source, THC meets the criteria for classification in schedule I of the CSA. It is an hallucinogenic substance with a high potential for abuse and no currently accepted medical use.[4] *See* 21 U.S.C. 812(b)(1). Thus, for purposes of CSA scheduling, there is no basis for distinguishing natural THC from synthetic THC.

Fourth, to ignore the foregoing considerations and to treat natural THC as a noncontrolled substance would provide a loophole in the law that might be exploited by drug traffickers. If natural THC were a noncontrolled substance, those portions of the cannabis plant that are excluded from the CSA definition of marijuana (the stalks and sterilized seeds of the plant) would be legal, noncontrolled substances—regardless of their THC content. As a result, it would be legal to import into the United States, and to possess, unlimited quantities of cannabis stalks and sterilized seeds—again, regardless of their THC content. Anyone could then obtain this raw cannabis plant material to produce an extract of THC—all without legal consequence. This would give drug traffickers an essentially limitless supply of raw plant material from which they could produce large quantities of a highly potent extract that would be considered a noncontrolled substance and, therefore, entirely beyond the reach of law enforcement. To provide such a safe harbor to drug traffickers would be plainly at odds with the purpose and structure of the CSA.[5]

Does This Rule Change the Legal Status of ''Hemp'' Products?

This rule does not change the legal status of so-called ''hemp'' products (products made from portions of the cannabis plant that are excluded from the CSA definition of marijuana).

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[1] For example, Merriam-Webster's Collegiate Dictionary (10th ed. 1999) defines ''THC'' as ''a physiologically active chemical $C_{21}H_{30}O_2$ from hemp plant resin that is the chief intoxicant in marijuana—called also tetrahydrocannabinol;'' this definition does not mention synthetic THC.

[2] In this context, ''every molecule of THC'' refers to every molecule of the same isomer of THC. For example, all molecules of ^{9}–(trans)–THC are identical, regardless of whether they are natural or synthetic.

It should also be noted that ''Tetrahydrocannabinols'' refers to a class of substances which includes ^{9}–(trans)–THC, its isomers, and other related substances. Collectively, this class will be referred to in this document as ''THC,'' unless otherwise indicated.

[3] At present, Marinol® is the only THC-containing drug product that has been approved for marketing by FDA. Marinol® contains synthetic dronabinol (an isomer of THC) in sesame oil and encapsulated in soft gelatin capsules. This product has been approved for the treatment of nausea and vomiting associated with cancer chemotherapy as well as the treatment of anorexia associated with weight loss in patients with AIDS. *See* 64 FR 35928 (1999) (DEA final order transferring Marinol® from schedule II to schedule III).

[4] There are no FDA-approved drug products that consist solely of THC. However, as stated in the preceding footnote, the FDA has approved a drug product (Marinol®), which contains synthetic THC with other ingredients in a specified product formulation.

[5] As one United States Court of Appeals has stated, ''a reading of the [CSA] and its legislative history makes it apparent that Congress, in legislating against drug use, intended to encompass every act and activity which could lead to proliferation of drug traffic. Nothing in the statute indicates any congressional intent to limit the reach of this legislation, which is described in its title as 'Comprehensive.' '' *United States* v. *Everett,* 700 F.2d 900, 907 (3d Cir. 1983) (internal citations omitted).

Rather, this rule clarifies provisions of the law and regulations that have been in effect since 1971. For the reasons provided in the interpretive rule, it is DEA's view that the CSA and DEA regulations have always (since their enactment more than 30 years ago) declared any product that contains any amount of tetrahydrocannabinols to be a schedule I controlled substance. This interpretation holds regardless of whether the product in question is made from ''hemp'' or any other material.

Nor does this rule add to, or subtract from, the exemptions issued by DEA in the October 9, 2001 interim rule. Every type of ''hemp'' product that was exempted from control under that interim rule will remain exempted following the finalization of this rule. Thus, given DEA's interpretation of current law (expressed in the interpretive rule), this rule does not change the legal status of any ''hemp'' product.

What Is the Difference Between This Final Rule and the Previously-Issued Interpretive Rule?

This final rule is a legislative rule. It is important to understand the difference between a legislative rule and an interpretive rule, such as the interpretive rule on THC that DEA issued on October 9, 2001. The following is a brief explanation of the difference between legislative rules and interpretive rules.

Under the Administrative Procedure Act (APA), agencies may issue interpretive rules to advise the public of how the agency interprets a particular provision of a statute or regulation which the agency administers.[6] By definition, interpretive rules are simply the agency's announcement of how it interprets existing law. Interpretive rules are not new laws and are not binding on the courts. Even though courts often defer to an agency's interpretive rule, they are always free to choose otherwise.

Legislative rules, on the other hand, have the full force of law and are binding on all persons, and on the courts, to the same extent as a congressional statute.[7] Because of this crucial difference, the APA requires agencies to engage in notice-and-comment proceedings before a legislative rule takes effect.[8] By the same reasoning, since interpretive rules do not have the full force of law and are not binding on the courts, the APA expressly allows agencies to issue interpretive rules without engaging in notice-and-comment. 5 U.S.C. 553(b)(A), (d)(2).

Consistent with these APA principles, DEA published the interpretive rule in October 2001 without notice and comment, whereas the legislative rule that is being finalized in this document has gone through notice and comment. As a result, this final rule will have the full force of law and be binding on the courts—just as with all the other DEA regulations that have gone through notice and comment.[9] In contrast, the interpretive rule was not binding on the courts. The practical effect of this distinction can be seen by considering the following hypothetical scenarios. If, prior to the publication of this final rule, a federal prosecution was commenced based solely on DEA's interpretive rule, the presiding court would have been free to choose between applying DEA's interpretation or its own interpretation of the law. But once this rule becomes final, if a person were to refuse to abide by the regulation and a federal prosecution were commenced, the court would be required to apply the new regulation.[10]

Comments That DEA Received in Response to the Proposed Rule

Following publication of the proposed rule, DEA received comments from thousands of individuals and groups. The comments were in the form of original letters, form letters, petitions, and a cookbook. Those who submitted comments included companies that manufacture and distribute various ''hemp'' products, associations that represent such manufacturers and distributors, domestic and Canadian government officials, and individuals. These commenters expressed criticisms on a variety of issues. In accordance with the APA, DEA carefully considered all of the comments it received.

Most of the comments that DEA received relate to both the proposed rule (DEA 205; 66 FR 51535) and the interim rule (DEA 206; 66 FR 51539), which were published together (along with the interpretive rule) in the October 9, 2001 **Federal Register**. Those comments that pertain primarily to DEA 205 are addressed in this final rule. Those comments that pertain primarily to DEA 206 are addressed in the final DEA 206 rule, which appears in a separate **Federal Register** document that immediately follows this document. Both DEA 205 and DEA 206 contain a summary of the pertinent comments, along with an explanation of how DEA considered them in deciding to finalize the rules.

The number of individuals and groups that participated in the comment process far exceeded the number of different issues raised. Many of the comments were similar to one another, partly because many persons submitted form letters or signed petitions written by groups which themselves submitted lengthy comments. In this document, together with the final rule finalizing the DEA 206 interim rule, DEA has addressed the major issues raised by the commenters. Some of these issues have already been addressed in the text that precedes this section. The remaining issues are addressed below and in the DEA 206 final rule.

Comments Expressing Legal Disagreement With the Proposed Rule

Many commenters disagreed with DEA's legal interpretation of those provisions of the CSA and DEA regulations that are relevant to the proposed rule. Specifically, these commenters disagreed with DEA's view that, under the plain language of the CSA, ''any material, compound, mixture, or preparation, which contains any quantity of * * * Tetrahydrocannabinols (THC)'' is a schedule I controlled substance. 21 U.S.C. 812(c), schedule I(c)(17); 21 CFR 1308.11(d)(27). These commenters asserted that THC content is irrelevant when it comes to products made from portions of the cannabis plant that are excluded from the definition of marijuana. According to these commenters, DEA should allow the CSA definition of marijuana to dictate which portions of the cannabis plant are controlled substances. DEA addressed this issue in detail in the legal analysis contained in the interpretive rule. Nonetheless, many commenters asserted that their point of view is the correct reading of the law and should be substituted for that of DEA. DEA reexamined this issue in view of the comments. While recognizing that many proponents of ''hemp'' products are steadfast in their view that natural THC content is irrelevant in deciding what is a controlled substance, DEA continues to believe that its interpretation follows directly from the plain language of the

[6] *See Shalala* v. *Guernsey Memorial Hosp.,* 514 U.S. 87, 99 (1995).

[7] *National Latino Media Coalition* v. *F.C.C.,* 816 F.2d 785, 788 (D.C. Cir. 1987).

[8] *Syncor Int'l Corp.* v. *Shalala,* 127 F.3d 90, 95 (D.C. Cir. 1997) (''it is because the agency is engaged in lawmaking [when it issues a legislative rule] that the APA requires it to comply with notice and comment'').

[9] The DEA regulations are published in Title 21 of the Code of Federal Regulations, Part 1300.

[10] Legislative regulations are controlling on the courts unless they are ''arbitrary, capricious, or manifestly contrary to the statute.'' *Chevron, U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. 837, 844 (1984).

CSA and the DEA regulations and is consistent with the legislative history of the statute and regulations. Moreover, DEA believes that the analysis contained in the interpretive rule refutes all of the contrary legal arguments expressed in the comments. As the agency responsible for administering the CSA, it is DEA's obligation to ensure that the regulations clearly reflect what the agency believes are the purpose and intent of the Act.

Comments as to Whether This Rule Constitutes a Rescheduling Action

Some commenters expressed the view that this rule is a rescheduling action within the meaning of 21 U.S.C. 811 and that DEA should have gone through the procedures set forth in that section prior to issuing this rule.[11] These comments appear to be based on a misunderstanding of the nature of the procedures under section 811. By its express terms, section 811 applies only where DEA seeks to add a substance to a schedule or remove one from a schedule. For example, if DEA were seeking to move a controlled substance from schedule II to schedule III, the agency would be required to follow the procedures set forth in section 811. The final rule being published today, however, does not change the schedule of THC or any other controlled substance. To the contrary, when this final rule becomes effective, on April 21, 2003, THC will remain in the same schedule in which it has been since the enactment of the CSA in 1970: Schedule I.

Nor would engaging in the rescheduling procedures set forth in section 811 be consistent with the purpose of this rule. Section 811 sets forth the procedures to determine whether a particular substance meets the criteria for placement in a particular schedule. The purpose of this rule is not to determine whether THC meets the criteria for classification in schedule I; rather, this rule serves to clarify that the longstanding placement of THC in schedule I includes both natural and synthetic THC. There is no question about whether THC meets the criteria for placement in schedule I.[12] Even those commenters who suggested that this rule should be issued under section 811 do not dispute that all THC (natural or synthetic) meets the criteria for placement in schedule I. As discussed above, the chemical THC has the identical physical and chemical properties, and produces the same psychoactive effects, regardless of whether it is natural or synthetic. For these reasons, section 811 is inapplicable to this rule.

Comments Regarding Poppy Seeds

Some of the commenters asserted that DEA should not take literally the plain language of the CSA: that ''any material, compound, mixture, or preparation, which contains any quantity of * * * Tetrahydrocannabinols [THC]'' is a schedule I controlled substance. To read this provision literally, some commenters said, would mean that poppy seeds must be considered controlled substances if they contain trace amounts of opiates (such as morphine, codeine, or thebaine). This concern is unfounded because, under the CSA and DEA regulations, substances that contain opiates are controlled differently than substances that contain schedule I hallucinogens (such as THC). It is true that poppy seeds are excluded from the definition of opium poppy (21 U.S.C. 802(19)) just as sterilized cannabis seeds are excluded from the definition of marijuana. However, while it is the case that ''any material, compound, mixture, or preparation, which contains any quantity of'' an hallucinogenic controlled substance is a controlled substance (21 U.S.C. 812(c), schedule I (c); 21 CFR 1308.11(d)), it is not the case that any material, compound, mixture, or preparation which contains any quantity of an opiate is a controlled substance. Rather, naturally-occurring opiates found in substances of vegetable origin are subject to control under the CSA only if they are extracted from the substances of vegetable origin. 21 U.S.C. 812(c), schedule II(a); 21 CFR 1308.12(b)).[13]

Comments Regarding the Single Convention on Narcotic Drugs

Several commenters asserted that the proposed rule is impermissible in view of a certain provision of the Single Convention on Narcotic Drugs, 1961 (''Single Convention''). The Single Convention, which the United States ratified in 1967, was designed to establish effective control over international and domestic traffic in controlled substances, and parties to the Convention are required to implement certain minimum measures. Article 28 of the Single Convention imposes on parties certain restrictions on the cultivation of the cannabis plant. However, paragraph 2 of Article 28 states that the Single Convention does not apply ''to the cultivation of the cannabis plant exclusively for industrial purposes (fibre [sic] and seed) or horticultural purposes.'' Several commenters asserted that this provision means that the United States is prohibited from imposing any restrictions on ''hemp.'' This assertion is incorrect.

The Single Convention sets minimum standards of drug control measures that the parties must apply—not maximum measures. Parties are free to impose whatever additional measures they believe are necessary to prevent the misuse, and illicit traffic in, controlled substances. Indeed, various provisions of the CSA go beyond the minimum measures required by the Single Convention. Congress's decision under the CSA to control anything that contains ''any quantity'' of THC is the decisive factor for purposes of this rule, regardless of whether a less restrictive rule would be permissible under the Single Convention.[14]

[11] Under 21 U.S.C. 811, to change the schedule of a controlled substance, DEA must first request from the Secretary of Health and Human Services a scientific and medical evaluation and scheduling recommendation and follow additional procedures set forth in section 811. However, as discussed above, section 811 is inapplicable where, as in this final rule, DEA is not changing the schedule of a controlled substance.

[12] The criteria for placement in schedule I are: ''no currently accepted medical use in treatment in the United States,'' ''a lack of accepted safety for use * * * under medical supervision,'' and ''a high potential for abuse.'' 21 U.S.C. 812(b)(1).

[13] Plant materials that are the source of narcotics, such as opium poppy, poppy straw, and opium, are specifically listed in schedule II. However, as stated above, the listing of opium poppy does not include poppy seeds, since the seeds are excluded from the definition of opium poppy.

[14] To fully address the distinctions between the control of cannabis under the Single Convention and the control of marijuana and THC under CSA would require a lengthy discussion. Such a discussion is unnecessary here because this rule is based on how THC is controlled under the CSA. Thus, there is no need to address here whether the reference in the Single Convention (Article 28, paragraph 2) to cannabis grown for ''industrial'' or ''horticultural'' purposes includes cannabis grown to make foods or beverages, or whether such reference is limited to non-human-consumption items such as rope, paper, textiles, industrial solvents, and birdseed.

A full analysis of the international drug control treaties would also require discussion of the Convention on Psychotropic Substances, 1971 (Psychotropic Convention). THC is a substance listed in the schedules of the Psychotropic Convention. Accordingly, the United States, as a party to the Psychotropic Convention, has certain obligations thereunder with respect to the control of THC. However, it is unnecessary to examine the scope of those obligations in this document because Congress stated expressly in United States domestic law that anything that contains ''any quantity'' of THC is a schedule I controlled substance, unless listed in another schedule or expressly exempted. Adherence to this rule and the corresponding provisions of the CSA ensures that the United States meets its obligations under the Psychotropic Convention with respect to THC.

Comments Regarding Trade Agreements

Some commenters expressed the view that the proposed rule violates certain obligations of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) agreements. Many of these same commenters expressed these assertions to DEA before the proposed rule was published in October 2001. As a result, both before and after publication of the proposed rule, DEA sought the input of the Department of State and other components of the Executive Branch with the relevant expertise and responsibility for such matters and concluded that the proposed rule—which simply clarifies longstanding federal law with respect to schedule I hallucinogenic controlled substances—does not violate NAFTA or the WTO agreements.

One of the bases for these treaty claims asserted by commenters is the contention that the proposed rule provides more favorable treatment to United States and foreign, non-Canadian investors and their investments than to Canadian ''hemp'' investors and their investments in the United States. In reality, the rule applies to and treats all ''hemp'' industry investors and their investments the same—*i.e.*, regardless of nationality of ownership. No company (whether Canadian-owned, foreign but non-Canadian-owned, or United States-owned) can manufacture, distribute or market products used, or intended for use, for human consumption that contain any amount of THC. DEA has made no exception to this rule for any United States company or any foreign company.

Comments Requesting an Extension of the Comment Period

Some commenters asked DEA to extend the comment period. DEA did not do so for the following reasons. In the notice of the proposed rule, DEA provided a 60-day comment period from the date of the publication in the **Federal Register**, which allowed ample time for any interested persons to express their opinions.

DEA considered all comments that were postmarked within the comment period, even where the agency did not receive the comments until several months after the comment period closed.[15] It is evident from the number and variety of comments that were submitted, and the detailed nature of such comments, that a wide range of viewpoints was expressed to the agency during the comment period. Nearly all of the types of comments that were submitted during the comment period were repeated many times over by a number of commenters, which further indicates that interested parties have had sufficient opportunity to express their comments.

DEA provided the public with advance notice of the rules. In the year preceding the October 9, 2001 publication of the rules, DEA announced twice in the **Federal Register** that the agency would be issuing the proposed rule, along with the interpretive rule and the interim rule, and described the nature of the rules. See Department of Justice Unified Agenda, 66 FR 25624 (May 14, 2001), 65 FR 74024 (November 30, 2000). It is evident from the comments submitted on the proposed rule that the advance notice gave interested persons ample time to assemble and articulate their thoughts and opinions. Some of those persons who requested an extension of the comment period themselves submitted lengthy comments, indicating that they have already fully expressed their views. In light of these considerations, extending the comment period was unnecessary.

Comments Regarding Economic Impact of the Proposed Rule

Many commenters expressed concern about how the proposed rule might impact economically various businesses that deal in ''hemp'' products. These economic considerations are addressed in the next section of this document (regulatory certifications).

Regulatory Certifications

Certain provisions of Federal law and executive orders (specified below) require agencies to assess how their rules might impact the economy, small businesses, and the states. (Hereafter in this document, these provisions will be referred to collectively as the ''certification provisions.'') DEA has conducted these certifications. However, before discussing the economics, the nature of this rule should be reiterated. This rule revises the wording of the DEA regulations to clarify for the public the agency's understanding of longstanding federal law. In other words, through this rule, DEA is implementing what it believes to be the mandate of Congress under the CSA. (This mandate is that every substance containing THC be listed in schedule I, unless the substance is specifically exempted from control or listed in another schedule.) Regardless of how this rule might impact the economy, small businesses, or the states, DEA must carry out the mandate.

It is also critical to bear in mind that only a very narrow category of ''hemp'' products will be prohibited under the rules that DEA is publishing today. As a result of the exemptions issued by DEA under the interim rule, all ''hemp'' products that do not cause THC to enter the human body are entirely exempted from control, regardless of their THC content. Thus, items such as ''hemp'' clothing, industrial solvents, personal care products, and animal feed mixtures are considered noncontrolled substances (not subject to any of the CSA requirements) regardless of their THC content. This rule therefore causes no economic impact whatsoever on such exempted products.

It also must be considered that when Congress enacted the CSA, it created a system of controls that was comprehensive in scope to protect the general welfare of the American people within the context of the Act.[16] Incidental restrictions on economic activity resulting from enforcement of the CSA have never been viewed as a proper basis to cease such enforcement. The certification provisions are no exception to this principle.

Moreover, one of the chief aims of the certification provisions is to ensure that agencies consider the potential economic ramifications of imposing new regulations. This rule, however, does not create any new category of regulation governing the handling of controlled substances. Rather, the rule merely helps to clarify what products are, or are not, subject to what DEA believes are preexisting CSA requirements.

DEA recognizes, however, that some members of the public disagree with DEA's interpretation of the law with respect to THC. As a result, some companies may be continuing to market in the United States ''hemp'' food and beverage products that contain THC. Accordingly, for purposes of calculating the economic impact of these rules, DEA has assumed THC-containing ''hemp'' foods and beverages are lawful products until this rule becomes final.

In the regulatory certifications that accompanied the proposed rule, DEA explained in detail its analysis of the economic activity relating to ''hemp'' food and beverage products (referred to therein and hereafter in this document as ''edible 'hemp' products''). 66 FR at 51536–51537. In that analysis, using

[15] At the time the comment period closed, postal deliveries to DEA and other agencies were delayed after the widely-reported incidents of anthrax being sent through the mail. Because of this, although the proposed rule indicated that DEA would only consider comments received on or before December 10, 2001, the agency considered all comments postmarked by that date, even if they arrived late.

[16] *See* 21 U.S.C. 801(2).

conservative assumptions (erring on the side of inclusiveness), DEA estimated that the total sales of edible ''hemp'' products in the United States is no more than $20 million per year with no more than 500 persons employed in connection with these products. In the publication of the proposed rule, DEA urged any manufacture or distributor of ''hemp'' products to submit during the comment period any data on this economic activity that might warrant adjustments to these estimates. The comments that DEA received suggest that the agency might have overestimated the amount of economic activity tied to edible ''hemp'' products. The highest estimate submitted by representatives of businesses that produce and distribute edible ''hemp'' products was that the total sales of such products in the United States is approximately $6 million.

It also must be noted that not every such edible product marketed as a ''hemp'' product is necessarily prohibited under the rule being finalized today. As DEA stated repeatedly in the text accompanying the proposed rule and the interim rule, if a product says ''hemp'' on the label but contains no THC (or any other controlled substance), it is not a controlled substance and, therefore, not affected by this rule. At least one ''hemp'' food company claims that its products are THC-free.[17] If this is correct, such products are not controlled substances and not prohibited by the CSA. Thus, even if the edible ''hemp'' products business is a $6 million industry in the United States, some of that business might be able to continue under this final rule.

The one other category of products that might be impacted economically by this rule is that in which pure cannabis seeds are sold as birdseed. (As set forth in the interim rule, which is being finalized today, DEA is exempting animal feed mixtures containing sterilized cannabis seeds with other ingredients, but not pure sterilized cannabis seeds.) In the regulatory certifications attached to the proposed rule, DEA estimated that no more than $77,000 worth of birdseed that contains cannabis seeds is imported into the United States for sale in this country. It appears likely that most of this birdseed is sold in a mixture that is exempted under the interim rule. Accordingly, the total amount of pure ''hempseeds'' sold as birdseed in this country is probably much less than $77,000.

[17] On January 28, 2002, a company that sells ''hemp'' food products issued the following statement on its website (*http://www.thehempnut.com*): It is the position of HempNut, Inc. and the Hemp Food Association (HFA) that this Rule [published by DEA on October 9, 2001] is merely a clarification and confirmation of the basis under which DEA, US Customs, and all responsible hempseed importers have already been operating under for quite some time, namely, that hempseed products may not contain tetrahydrocannabinol (THC). A survey of hempseed importers revealed that all were in full compliance with the Rule, and have no THC in their products.

Regulatory Flexibility Act

For the reasons provided above, the Acting Administrator hereby certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). The economic activity that would be disallowed under this rule is already illegal under DEA's interpretation of existing law. Even if one were to assume that such economic activity were legal under current law, the prohibition on such activity resulting from this rule (summarized above) would not constitute significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Therefore, a final regulatory flexibility analysis is not required for this rule.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, 1(b), Principles of Regulation. This rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, 3(f). Accordingly, this rule has been reviewed by the Office of Management and Budget for purposes of Executive Order 12866.

Executive Order 13132

This rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rule does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Therefore, no actions are necessary under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

For the reasons provided above, this rule is not likely to result in any of the following: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The economic activity disallowed under this rule is already illegal under DEA's interpretation of existing law. Even if one were to assume that such economic activity were legal under current law, the prohibition on such activity resulting from this rule would not render the rule a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. Therefore, the provisions of SBREFA relating to major rules are inapplicable to this rule. However, a copy of this rule has been sent to the Office of Advocacy, Small Business Administration. Further, a copy of this final rule will be submitted to each House of the Congress and to the Comptroller General in accordance with SBREFA (5 U.S.C. 801).

Paperwork Reduction Act of 1995

This rule does not involve collection of information within the meaning of the Paperwork Reduction Act of 1995.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Final Rule

Pursuant to the authority vested in the Attorney General under sections 201, 202, and 501(b) of the CSA (21 U.S.C. 811, 812, and 871(b)), delegated to the Administrator and Deputy Administrator pursuant to section 501(a) (21 U.S.C. 871(a)) and as specified in 28 CFR 0.100 and 0.104, appendix to subpart R, sec. 12, the Acting Administrator hereby orders that Title 21 of the Code of Federal Regulations, part 1308, be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11(d)(27) is revised to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(27) Tetrahydrocannabinols—7370

Meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers

6 cis or trans tetrahydrocannabinol, and their optical isomers

3, 4 cis or trans tetrahydrocannabinol, and its optical isomers

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

* * * * *

Dated: March 18, 2003.

John B. Brown III,

Acting Administrator.

[FR Doc. 03–6804 Filed 3–20–03; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–206F]

RIN 1117–AA55

Exemption From Control of Certain Industrial Products and Materials Derived From the Cannabis Plant

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is adopting as final an interim rule exempting from control (*i.e.,* exempting from all provisions of the Controlled Substances Act (CSA)) certain items derived from the cannabis plant and containing tetrahydrocannabinols (THC). Specifically, the interim rule exempted THC-containing industrial products, processed plant materials used to make such products, and animal feed mixtures, provided they are not used, or intended for use, for human consumption (and therefore cannot cause THC to enter the human body).

DATES: This final rule becomes effective on April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537; Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Does This Rule Accomplish and by What Authority Is It Being Issued?

This final rule revises the DEA regulations to add a provision exempting from CSA control certain THC-containing industrial products, processed plant materials used to make such products, and animal feed mixtures, provided such products, materials, and feed mixtures are made from those portions of the cannabis plant that are excluded from the definition of marijuana and are not used, or intended for use, for human consumption. Among the types of industrial products that are exempted as a result of this final rule are: (i) Paper, rope, and clothing made from cannabis stalks; (ii) processed cannabis plant materials used for industrial purposes, such as fiber retted from cannabis stalks for use in manufacturing textiles or rope; (iii) animal feed mixtures that contain sterilized cannabis seeds and other ingredients (not derived from the cannabis plant) in a formulation designed, marketed, and distributed for animal (nonhuman) consumption; and (iv) personal care products that contain oil from sterilized cannabis seeds, such as shampoos, soaps, and body lotions (provided that using such personal care products does not cause THC to enter the human body).

This rule is being issued pursuant to 21 U.S.C. 811, 812, and 871(b). Sections 811 and 812 authorize the Attorney General to establish the schedules in accordance with the CSA and to publish amendments to the schedules in the Code of Federal Regulations, part 1308 of Title 21. Section 871(b) authorizes the Attorney General to promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient enforcement of his functions under the CSA. In addition, the Attorney General is authorized to exempt, by regulation, any compound, mixture, or preparation containing any controlled substance from the application of all or any part of the CSA if he finds such compound, mixture, or preparation meets the requirements of section 811(g)(3). These functions vested in the Attorney General by the CSA have been delegated to the Administrator and Deputy Administrator of DEA. 21 U.S.C. 871(a); 28 CFR 0.100(b) and 0.104, appendix to subpart R, sec. 12.

Why Is DEA Exempting From Control Certain THC-Containing Substances Not Intended for Human Consumption?

Without the exemptions made by the interim rule, which are adopted as final in this rule, a wide variety of legitimate industrial products derived from portions of the cannabis plant would be considered schedule I controlled substances. For example, paper, rope, and clothing (made using fiber from cannabis stalks) and industrial solvents, lubricants, and bird seed mixtures (made using sterilized cannabis seeds or oil from such seeds) would, in the absence of the interim rule, be considered schedule I controlled substances if they contained THC. If such products were considered schedule I controlled substances, their use would be severely restricted.[1] Under the interim rule, however, which DEA is adopting as final here, DEA exempted such legitimate industrial products from control, provided they are not used, or intended for use, for human consumption. As explained below, DEA believes this approach protects the public welfare within the meaning of the CSA while striking a fair balance between the plain language of the Act and the intent of Congress under prior marijuana legislation.

THC is an hallucinogenic substance with a high potential for abuse. Congress recognized this fact by placing it in schedule I of the CSA. Because of this, there are only two ways that THC may lawfully enter a person's body: (1) If the THC is contained in a drug product that has been approved by the Food and Drug Administration (FDA) as being safe and effective for human use; [2]

[1] The CSA and DEA regulations permit industrial use of schedule I controlled substances, but only under strictly regulated conditions.

[2] 21 U.S.C. 331, 355, 811(b), 812(b). At present, Marinol® is the only THC-containing drug product that has been approved for marketing by FDA. Marinol® is the brand name of a product containing synthetic dronabinol (a form of THC) in sesame oil and encapsulated in soft gelatin capsules that has been approved for the treatment of nausea and vomiting associated with cancer chemotherapy as well as the treatment of anorexia associated with weight loss in patients with AIDS. Because Marinol® is the only THC-containing drug approved by FDA, it is the only THC-containing substance listed in a schedule other than schedule

Continued

or (2) if an experimental drug containing THC is provided to a research subject in clinical research that has been approved by FDA and conducted by a researcher registered with DEA.[3] Disallowing human consumption of schedule I controlled substances except in the foregoing limited circumstances is an absolute necessity to conform with the CSA and protect the public welfare within the meaning of the Act.[4]

Where, however, a schedule I controlled substance is contained in a product not used for human consumption, the CSA provides DEA with discretionary authority to issue regulations exempting such product from control.[5] DEA has carefully considered whether it is appropriate to exercise this discretionary authority when it comes to industrial ''hemp'' products (*i.e.,* products made from portions of the cannabis plant excluded from the CSA definition of marijuana). The text of the CSA and its legislative history make no mention of industrial uses of the cannabis plant. However, DEA has taken into account that, under prior legislation (the Marihuana Tax Act of 1937), Congress intended to permit the use of certain cannabis-derived industrial products. The Senate Report accompanying the 1937 Act stated:

> The [cannabis] plant * * * has many industrial uses. From the mature stalks, fiber is produced which in turn is manufactured into twine, and other fiber products. From the seeds, oil is extracted which is used in the manufacture of such products as paint, varnish, linoleum, and soap. From hempseed cake, the residue of the seed after the oil has been extracted, cattle feed and fertilizer are manufactured. In addition, the seed is used as a special feed for pigeons.

S. Rep. No. 900, 75th Cong., 1st Sess., at 2–3 (1937). DEA recognizes that the intent of Congress in 1937 to allow the foregoing industrial ''hemp'' products is no longer controlling because the CSA (enacted in 1970) repealed and superseded the 1937 Marihuana Tax Act. DEA further recognizes that the allowance that Congress made for such products under the now-rescinded Marihuana Tax Act was based on a 1937 assumption (now refuted) that such products contained none of the psychoactive drug now known as THC. (In contrast, when Congress enacted the CSA in 1970, it expressly declared that anything containing THC is a schedule I controlled substance.)[6] Still, for the reasons provided below, DEA believes it is an appropriate exercise of the Administrator's discretionary authority under the CSA to issue an exemption allowing the legitimate industrial uses of ''hemp'' that were allowed under the 1937 Act. At the same time, DEA has been careful to ensure that this exemption comports with the CSA by maintaining the rule that no humans may lawfully take THC into their bodies except when they are (i) using an FDA-approved drug product or (ii) the subjects of FDA-authorized research.

DEA may not arbitrarily exempt a controlled substance from application of the CSA. Rather, such an exemption must be based on a provision of the CSA. As cited above, the exemption of certain ''hemp'' products under this final rule is issued pursuant to two CSA provisions: 21 U.S.C. 811(g)(3)(B) and 871(b).

Pursuant to 811(g)(3)(B), the Administrator of DEA may exempt from control ''[a] compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.'' This provision, which was added to the CSA in 1984, was aimed primarily at analytic standards and preparations which are not for use in humans and pose no significant abuse threat by nature of their formulation. It bears emphasis, however, that Congress did not mandate that DEA exempt from control all mixtures and preparations that DEA determines meet the criteria of section 811(g)(3)(B). Rather, as the word ''may'' in the first line of section 811(g)(3) indicates, Congress gave DEA discretionary authority to issue such exemptions.

The DEA regulation that implements section 811(g)(3)(B) is 21 CFR 1308.23. Section 1308.23(a) provides that the Administrator may exempt from control a chemical preparation or mixture containing a controlled substance that is ''intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or other animal'' if it is packaged in such a form or concentration, or with adulterants or denaturants, so that the presence of the controlled substance does not present any significant potential for abuse.

DEA believes that industrial ''hemp'' products such as paper, clothing, and rope, when used for legitimate industrial purposes (not for human consumption) meet the criteria of section 811(g)(3)(B) and § 1308.23. Legitimate use of such products cannot result in THC entering the human body. Moreover, allowing these products to be exempted from CSA control in no way hinders the efficient enforcement of the CSA. Accordingly, DEA believes that these types of industrial products should be exempted from application of the CSA, provided they are not used, or intended for use, for human consumption. For the same reasons, processed cannabis plant materials that cannot readily be converted into any form that can be used for human consumption, and which are used in the production of such legitimate industrial products, are being exempted from control under this final rule.

The use of sterilized cannabis seeds[7] that contain THC in animal feed fails to meet the criteria of section 811(g)(3)(B) and section 1308.23 because this involves the use of a controlled substance (THC) in animals.[8] Nonetheless, pursuant to 21 U.S.C. 871(b), DEA believes it is appropriate to exempt from application of the CSA animal feed mixtures containing such seeds, provided the seeds are mixed with other ingredients that are not derived from the cannabis plant in a formulation designed, marketed and distributed for animal consumption (not for use in humans). Section 871(b) authorizes the Attorney General to promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient enforcement of his functions under the CSA. It should be underscored that section 871(b) is not a catchall provision that can be used to justify any exemption. For the following

I. DEA recently transferred Marinol® from schedule II to schedule III, thereby lessening the CSA regulatory requirements governing its use as medicine. See 64 FR 35928 (1999).

[3] 21 U.S.C. 823(f); 21 CFR 5.10(a)(9), 1301.18, 1301.32.

[4] In enacting the CSA, Congress stated: ''The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.'' 21 U.S.C. 801(2).

[5] See 21 U.S.C. 811(g)(3); see also 21 U.S.C. 871(b) (providing discretionary authority to DEA Administrator to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under [the CSA].'').

[6] A detailed comparison of the 1937 Marihuana Tax Act and the CSA is provided in the October 9, 2001 interpretive rule. 66 FR at 51530–51531.

[7] Unless otherwise indicated, all references in this document to ''cannabis seeds'' or '' 'hemp' seeds'' refer to sterilized seeds (incapable of germination). In contrast to sterilized cannabis seeds, unsterilized cannabis seeds fit within the CSA definition of marijuana and are not exempted from control under this interim rule.

[8] If, however, the ''hemp'' seeds used in animal feed are sterilized cannabis seeds that contain no THC, such seeds are not a controlled substance. Under such circumstances, there is no need to exempt such seeds from control.

reasons, however, DEA believes that the use of sterilized cannabis seeds in animal feed mixtures is a unique situation that warrants an exemption pursuant to section 871(b).

As stated above and in the interpretive rule, the legislative history of the 1937 Marihuana Tax Act reveals that Congress expressly contemplated allowing ''hemp'' animal feed. The 1937 Congress categorized such use of ''hemp'' as a legitimate ''industrial'' use. It is true that the intent of the 1937 Congress is no longer controlling since the CSA repealed the 1937 Act and declared anything containing THC to be a schedule I controlled substance. However, because neither the text nor the legislative history of the CSA addresses the legality of using sterilized cannabis seeds in animal feed, or the possibility that such seeds might contain THC, what was viewed under the 1937 Act as ''legitimate industrial use'' of such seeds in animal feed continued uninterrupted following the enactment of the CSA in 1970.

The historical lack of federal regulation of some THC-containing products (whether based on differences between prior law and the CSA, lack of awareness of the THC content of such product, or other considerations) does not—by itself—justify exempting such product from control under the CSA. DEA remains obligated to apply the provisions of the CSA to all controlled substances absent a statutory basis to exempt a particular substance from control. However, with respect to animal feed mixtures containing sterilized cannabis seeds, additional factors (combined with Congress' express desire under prior legislation to allow such products) justify an exemption pursuant to section 871(b). The presence of a controlled substance in animal feed poses less potential for abuse than in a product intended for human use and does not entail the administration of THC to humans. Moreover, when sterilized cannabis seeds are mixed with other animal feed ingredients and not designed, marketed, or distributed for human use, there is minimal risk that they will be converted into a product used for human consumption. Therefore, such legitimate use in animal feed mixtures poses no significant danger to the public welfare. Accordingly, given the unique circumstances and history surrounding the use of sterilized cannabis seeds in animal feed, DEA believes that it comports with the CSA to continue to treat such activity as a legitimate industrial use—not subject to CSA control—provided the foregoing conditions are met.

How Is ''Human Consumption'' Defined Under This Rule?

Under this final rule, a material, compound, mixture, or preparation containing THC will be considered ''used for human consumption'' (and therefore not exempted from control) if it is: (i) Ingested orally or (ii) applied by any means such that THC enters the human body. A material, compound, mixture, or preparation containing THC will be considered ''intended for use for human consumption'' and, therefore, not exempted from control if it is: (i) Designed by the manufacturer for human consumption; (ii) marketed for human consumption; or (iii) distributed, exported, or imported with the intent that it be used for human consumption.

In any legal proceeding arising under the CSA, the burden of going forward with the evidence that a material, compound, mixture, or preparation containing THC is exempt from control pursuant to this rule shall be upon the person claiming such exemption. 21 U.S.C. 885(a)(1). In order to meet this burden with respect to a product or processed plant material that has not been expressly exempted from control by the Administrator pursuant to 21 CFR 1308.23 (as explained below under the heading ''What Is the Control Status of Personal Care Products Made from 'Hemp'?''), the person claiming the exemption must present rigorous scientific evidence, including well-documented scientific studies by experts trained and qualified to evaluate the effects of drugs on humans.

How Are ''Processed Plant Material'' and ''Animal Feed Mixture'' Defined Under This Rule?

Under this final rule, any portion of the cannabis plant excluded from the CSA definition of marijuana will be considered ''processed plant material'' if it has been subject to industrial processes, or mixed with other ingredients, such that it cannot readily be converted into any form that can be used for human consumption. For example, fiber that has been separated from the mature stalks by retting for use in textiles is considered processed plant material, which is exempted from control, provided it is not used, or intended for use, for human consumption. In comparison, mature stalks that have merely been cut down and collected do not fit within the definition of ''processed plant material'' and, therefore, are not exempted from control. As another example, if a shampoo contains oil derived from sterilized cannabis seeds, one would expect that, as part of the production of the shampoo, the oil was subject to industrial processes and mixed with other ingredients such that, even if some THC remains in the finished product, the shampoo cannot readily be converted into a product that can be consumed by humans. Under such circumstances, the product is exempted from control under this final rule. In comparison, a personal care product that consists solely of oil derived from cannabis seeds does not meet the definition of ''processed plant material'' under this final rule and, therefore, is not exempted from control.

''Animal feed mixture'' is defined under this final rule to mean sterilized cannabis seeds mixed with other ingredients in a formulation that is designed, marketed, and distributed for animal consumption (and not for human consumption). For example, sterilized cannabis seeds mixed with seeds from other plants and for sale in pet stores fit within the definition of ''animal feed mixture'' and are exempted from control under this final rule provided the feed mixture is not used, or intended for use, for human consumption. (In contrast, a container of pure sterilized cannabis seeds—mixed with no other ingredients—does not meet the definition of ''animal feed mixture'' under this final rule and, therefore, is not exempted from control.)

Which ''Hemp'' Products Are Exempted From Control Under This Rule?

It is impossible to list every potential product that might be made from portions of the cannabis plant excluded from the definition of marijuana. Therefore, DEA cannot provide an exhaustive list of ''hemp'' products that are exempted from control under this final rule. Nonetheless, in order to provide some guidance to the public, the following are some of the more common ''hemp'' products that are exempted (noncontrolled) under this final rule, provided they are not used, or intended for use, for human consumption: paper, rope, and clothing made from fiber derived from cannabis stalks, industrial solvents made with oil from cannabis seeds, and bird seed containing sterilized cannabis seed mixed with seeds from other plants (or other ingredients not derived from the cannabis plant). Personal care products (such as lotions and shampoos) made with oil from cannabis seeds are also generally exempted, as explained below.

Which ''Hemp'' Products Are Not Exempted From Control Under This Rule?

Other than those substances that fit within the exemption being issued in

this final rule, all other portions of the cannabis plant, and products made therefrom, that contain any amount of THC are schedule I controlled substances.

Again, because one cannot list every conceivable ''hemp'' product, it is impossible to examine here every ''hemp'' product for a determination of whether such product is used, or intended for use, for human consumption within the meaning of this final rule. Therefore, this document contains no exhaustive list of ''hemp'' products that are not exempted from control under this final rule. Nonetheless, to provide some guidance, the following are some of the ''hemp'' products that are not exempted from control under this final rule (and therefore remain controlled substances) if they contain THC: any food or beverage (such as pasta, tortilla chips, candy bars, nutritional bars, salad dressings, sauces, cheese, ice cream, and beer) or dietary supplement.

What Is the Control Status of Personal Care Products Made From ''Hemp''?

DEA has not conducted chemical analyses of all of the many and varied personal care products that are marketed in the United States, such as lotions, moisturizers, soaps, or shampoos that contain oil from sterilized cannabis seeds. Indeed, it appears that there is no reliable source of information on these products. Accordingly, DEA does not know whether every personal care product that is labeled a ''hemp'' product necessarily was made using portions of the cannabis plant, and if so, whether such portions of the plant are those excluded from the definition of marijuana. Even if one assumes that a product that says ''hemp'' on the label was made using cannabis seeds or other portions of the plant, one cannot automatically infer, without conducting chemical analysis, that the product contains THC.[9] Assuming, however, that a ''hemp'' product does contain THC, and assuming further that such product is marketed for personal care (*e.g.*, body lotion or shampoo), the question remains whether the use of the product results in THC entering the human body. DEA is unaware of any scientific evidence that definitively answers this question. Therefore, DEA cannot state, as a general matter, whether ''hemp'' personal care products are exempted from control under this final rule. Nonetheless, given the information currently available, DEA will assume, unless and until it receives evidence to the contrary, that most personal care products do not cause THC to enter the human body and, therefore, are exempted under this final rule. For example, DEA assumes at this time that lotions, moisturizers, soaps, and shampoos that contain oil from sterilized cannabis seeds meet the criteria for exemption under this final rule because they do not cause THC to enter the human body and cannot be readily converted for human consumption. However, if a personal care ''hemp'' product is formulated and/or designed to be used in a way that allows THC to enter the human body, such product is not exempted from control under this final rule.

Again, it must be emphasized that, although DEA believes that most personal care ''hemp'' products currently marketed in the United States meet the criteria for exemption under this final rule, it is not possible for DEA to provide an exhaustive list of every such product and to state whether such product is exempted. Should manufacturers, distributors, or importers of ''hemp'' personal care products wish to have their products expressly exempted from control, they should take steps to determine whether such products contain THC and, if they do contain THC, whether use of the products results in THC entering the human body. Any such manufacturer, distributor, or importer who believes that its product satisfies the criteria for exemption under this final rule may request that DEA expressly declare such product exempted from control by submitting to DEA an application for an exemption, together with appropriate scientific data, in accordance with the procedures set forth in 21 CFR 1308.23(b) and (c).

A manufacturer, distributor, or importer of a ''hemp'' product that meets the criteria for exemption under this final rule need not obtain an express exemption from DEA in order to continue to handle such product. Rather, this is a voluntary procedure. DEA leaves it to the individual manufacturer, distributor, or importer to decide whether there is sufficient uncertainty about its product to seek an express exemption from DEA. However, any person who continues to handle a ''hemp'' product that does not meet the criteria for an exemption under this final rule is subject to liability under the CSA.

What Is the Legal Status of ''Hemp'' Products That Contain No THC?

Any portion of the cannabis plant, or any product made therefrom, or any product that is marketed as a ''hemp'' product, that is both excluded from the definition of marijuana and contains no THC—natural or synthetic—(nor any other controlled substance) is not a controlled substance. Accordingly, such substances need not be exempted from control under this final rule, since they are, by definition, noncontrolled.

What Is the Justification for Issuing the Exemptions Under This Rule?

DEA believes it is both necessary for the most effective enforcement of the CSA and consistent with the public interest to allow the exemptions contained in this rule. Otherwise, as provided in the CSA and DEA regulations, all products containing any amount of THC are schedule I controlled substances. In other words, in the absence of this final rule, legitimate industrial ''hemp'' products such as paper, rope, clothing, and animal feed mixtures would be schedule I controlled substances if they contain THC. Thus, without the exemptions that are being finalized in this rule, anyone who sought to import such products for legitimate industrial uses would need to obtain a DEA registration and an import permit. 21 U.S.C. 952(a)(2), 957(a). Likewise, distributors of such products would need a DEA registration and would be required to utilize DEA order forms and maintain strict records of all transactions. 21 U.S.C. 822(a)(1), 827(a), 828(a). DEA believes that such regulatory requirements are unnecessary to protect the public welfare and achieve the goals of the CSA, provided such products are not used, or intended for use, for human consumption. Furthermore, DEA believes that it would not be an appropriate prioritization of limited agency resources to take on the responsibility of regulating these products as schedule I controlled substances when they are not being used for human consumption. Therefore, as long as there is no possibility that humans will consume THC by using something other than an FDA-approved drug product or a product that the FDA has authorized for clinical research, DEA believes that it is consistent with the purposes and structure of the CSA to exempt industrial ''hemp'' products, processed plant materials, and animal feed mixtures in the manner specified in this final rule.

[9] Any product that (i) is made from portions of the cannabis plant excluded from the CSA definition of marijuana and (ii) contains no THC (nor any other controlled substance) is not a controlled substance.

What Are the Registration Requirements for Handlers of ''Hemp'' Products Under This Final Rule?

In light of the exemptions provided under this rule, the following registration requirements should be considered:

Who must obtain a registration—Persons who wish to manufacture or distribute any THC-containing product or plant material that is not exempted from control under this rule must apply for the corresponding registration to handle a schedule I controlled substance. Absent such registration, it is unlawful to manufacture, distribute, or dispense, import, or export any such product or plant material. 21 U.S.C. 822(b), 841(a)(1), 957(a), 960(a). The circumstances under which DEA may grant registrations to handle schedule I controlled substances are limited, as set forth in 21 U.S.C. 823.

In addition, no person may cultivate the cannabis plant for any purpose except when expressly registered with DEA to do so. This has always been the case since the enactment of the CSA. 21 U.S.C. 822(b), 823(a); 21 CFR Part 1301; *see New Hampshire Hemp Council, Inc.* v. *Marshall, 203* F.3d 1 (1st Cir. 2000). Further, the CSA prohibits the importation of schedule I controlled substances except as authorized by 21 U.S.C. 952(a)(2). Similarly, the CSA prohibits the exportation of schedule I nonnarcotic controlled substances except as authorized by 21 U.S.C. 953(c).

Who need not obtain a registration—Persons who import and distribute ''hemp'' products and processed cannabis plant material that are exempted from control under this final rule are not subject to any of the CSA requirements, including the requirement of registration. For example, a person who imports ''hemp'' clothing is not considered to be importing a controlled substance and is, therefore, not subject to any of the CSA requirements. Similarly, a person who has imported into the United States processed cannabis plant material that is exempted under this rule (such as retted fiber) and converts such material into an exempted ''hemp'' product (such as clothing) is not considered to be manufacturing a controlled substance and, therefore, need not obtain a controlled substance manufacturing registration.

It is worth repeating here that, if a product marketed as a ''hemp'' product actually contains no THC (or any other controlled substance), it is noncontrolled and handlers of the product are not subject to any of the CSA provisions, such as the registration requirement.

Comments That DEA Received in Response to the Interim Rule

Following publication of the interim rule, DEA received comments from thousands of individuals and groups. The comments were in the form of original letters, form letters, petitions, and a cookbook. Those who submitted comments included companies that manufacture and distribute various ''hemp'' products, associations that represent such manufacturers and distributors, domestic and Canadian government officials, and individuals. In accordance with the Administrative Procedure Act, DEA carefully considered all of the comments it received.

Most of the comments that DEA received relate to both of the rules that DEA published on October 9, 2001: (i) DEA 205 (66 FR 51535), a proposed rule, which proposed to clarify that the listing of THC includes both natural and synthetic THC and (ii) DEA 206 (66 FR 51539), an interim rule, which exempted certain THC-containing products and plant materials from control. Those comments that DEA received which pertain primarily to the interim rule are addressed here. Those comments which pertain primarily to the proposed rule are addressed in the final DEA 205 rule, which appears in a separate **Federal Register** document that immediately precedes this document. Both DEA 205 and DEA 206 contain a summary of the pertinent comments, along with an explanation of how DEA considered them in deciding to finalize the rules.

The number of individuals and groups that participated in the comment process far exceeded the number of different issues raised. The issues raised overlapped to a large extent as many persons submitted form letters or signed petitions written by groups which themselves submitted lengthy comments. In this document, together with the final proposed rule, DEA has addressed all the major issues raised by the commenters. Some of these issues are addressed above in the text that precedes this section. The remaining issues are addressed below.

Comments Regarding Which Products To Exempt From Control

None of the commenters objected to the basic purpose of this rule: To exempt from control certain THC-containing industrial products and animal feed mixtures made from ''hemp'' (portions of the cannabis plant excluded from the definition of marijuana). To the contrary, all the commenters who expressed an opinion on this particular issue agreed with these exemptions.[10] However, many commenters said that DEA should go further by also exempting ''hemp'' food and beverage products that contain THC. DEA declined to adopt this suggestion for the reasons provided herein.

Those commenters who requested that DEA exempt THC-containing ''hemp'' food and beverage products made two main claims in support of this request: (i) That ''hemp'' foods and beverages contain only minimal amounts of THC, which, they asserted, cannot cause any psychoactive effects; and (ii) that the oil from ''hemp'' seeds (sterilized cannabis seeds) provides nutritional value and is a safe food ingredient.[11]

As to the issue of THC content, many of the comments appeared to be asking DEA simply to assume that the placement of the word ''hemp'' on the label of a food or beverage product automatically means that the product contains a certain low amount of THC. In fact, the existence of the word ''hemp'' on the label of a food container provides no definitive proof of its contents. The FDA cannot and does not evaluate the contents of every food product sold in the United States. Since there is no reliable information about the contents of all foods and beverages marketed as ''hemp'' products, it cannot automatically be assumed that all such products will never cause a psychoactive effect or a positive drug test for THC.

One scientific study published in 1997 examined ''hemp'' salad oil (containing oil from cannabis seeds) sold in ''hemp shops'' and health food stores in Switzerland. The authors of the study stated that all the human subjects who ate the cannabis seed oil reported THC-specific psychotropic symptoms and had urine samples positive for THC.[12] In citing this study, DEA is not

[10] Some commenters were under the mistaken impression that DEA failed to exempt any products from control. These commenters asked DEA to exempt what DEA had already exempted under the interim rule. For example, several commenters objected to DEA's supposed failure to exempt ''hemp'' clothing and paper, even though the interim rule stated repeatedly that such products were being exempted.

[11] Some commenters also expressed concern about the economic impact of disallowing THC-containing ''hemp'' food and beverage products. This issue is addressed in the final 205 rule, in the regulatory certifications.

[12] T. Lehman, Institute of Pharmacy, University of Bern, *et al.,* Excretion of Cannabinoids in Urine after Ingestion of Cannabis Seed Oil, Journal of Analytical Toxicology, vol. 21 (September 1997).

suggesting that all ''hemp'' food and beverage products cause psychoactive effects. Rather, DEA mentions this study in response to the assertions made by some commenters that eating ''hemp'' foods cannot possibly cause psychoactive effects.[13]

Attached to one of the comments was another study, which was also financed by various ''hemp'' companies. This study, entitled ''Assessment of Exposure to and Human Health Risk from THC and other cannabinoids in hemp foods,'' reached similar conclusions about the reduced levels of THC in currently marketed ''hemp'' foods and the diminished likelihood of testing positive for THC when consuming such products.

As for the comments claiming that ''hemp'' foods provide essential nutrients and are safe to eat, it is not DEA's role under the CSA to assess the nutritional value or safety of foods.[14] Regardless of whether the oil from cannabis seeds contains certain nutrients,[15] the CSA does not provide for DEA to exempt food products that contain THC. As explained above and in the text accompanying the interim rule, the CSA prohibits human consumption of ''any quantity'' of a schedule I hallucinogenic substance outside of an FDA-approved product or FDA-approved research. Other than drugs that have been approved by the FDA for prescription use, or drugs that may be lawfully sold over the counter without a prescription, DEA may not exempt controlled substances to allow them to be used for human consumption—even in the case of products that supposedly contain only ''trace amounts'' of a controlled substance. 21 U.S.C. 811(g). Thus, DEA may not, as some commenters proposed, pick an arbitrary cutoff line allowing a certain percentage of THC in foods and beverages. Moreover, notwithstanding the statutory prohibition, DEA believes it would be inappropriate to attempt to establish an acceptable level of schedule I hallucinogens in food products. For example, it would not be appropriate to allow food products to contain ''trace amounts'' of such other schedule I hallucinogens as LSD or MDMA (''ecstasy''). Finding that it is contrary to the public welfare to allow human consumption of ''any quantity'' of schedule I hallucinogens, Congress did not give DEA the authority to determine what constitutes a ''safe amount'' of such drugs in food.[16]

Accordingly, DEA has limited the exemptions provided in this final rule to those cannabis-derived ''hemp'' products that do not cause THC to enter the human body.

Comments Regarding Testing Methods To Evaluate THC Content of Foods and Beverages

Many commenters asked the agency to indicate how it will determine whether a food or beverage product contains THC. Under federal law, it is legally sufficient to demonstrate a violation of the CSA based on the presence of any measurable amount of a prohibited controlled substance.[17] Thus, the questions raised by the commenters are: ''What testing methods will DEA utilize to determine whether a food product contains a measurable amount of THC and how sensitive are such methods?''

DEA will utilize testing assays or protocols used in standard analytical laboratories that have demonstrated valid and reliable sensitivity for the measurements of THC.[18] The methodology, level of sensitivity, and degree of testing accuracy in the fields of analytical and forensic chemistry have evolved since the first discovery of THC in the 1960s. A variety of analytical equipment, testing methodologies, and protocols are described in the published scientific literature.[19] Such methods may include (but are not limited to) gas chromatography, liquid chromatography, and mass spectrometry analyses. DEA has not, and will not, utilize any one method to the exclusion of others.[20]

The lower limit of detectability of these assays can vary according to equipment, methodologies, and the form of the sample. Nonetheless, using currently available analytical methodologies and extraction procedures, it is reasonable to reproducibly and accurately detect THC at or below 1 part per million in cannabis bulk materials or products. Should more sensitive assays and analytical techniques be developed in the future, DEA will refine its testing methods accordingly.

Some companies that handle ''hemp'' food products have asked DEA whether the agency would test the companies' products for THC content. It is not

[13] In a later study, financed by various ''hemp'' companies, human subjects were given oil from cannabis seeds containing lower doses of THC than in the Lehman study. G. Leson, *et al.,* Evaluating the Impact of Hemp Food Consumption on Workplace Drug Tests, Journal of Analytic Toxicology, vol. 25 (November/December 2001). The authors of this study reported that ingestion of cannabis seed oil containing these lower doses of THC resulted in little or no positive screening for THC, depending on the amount of THC consumed and the sensitivity of the urine testing. Companies who financed this study assert that the lower THC content given to the subjects of this study is commensurate with the current methods employed by these companies for cleaning the cannabis seeds before removing the oil from them for use in food products.

[14] In the context of the CSA, the public ''safety'' (and DEA's role therein) is implicated by the use of controlled substances for other than a legitimate medical purpose or in any other manner not authorized by the CSA.

[15] Although this rule is not a food safety measure, because DEA received so many comments regarding this issue, some members of the public may be interested in the following information. Under the Federal Food, Drug, and Cosmetic Act, a substance that is added to food is not subject to the requirement of premarket approval if its safety is generally recognized among qualified scientific experts under the conditions of its intended use. 21 U.S.C. 321(s). A substance added to a food may be considered ''generally recognized as safe'' (GRAS) through experience based on ''common use in food,'' which requires a substantial history of consumption for food use by a significant number of consumers. 21 CFR 170.3(f), (h); 21 CFR 170.30. The FDA evaluated an industry submission claiming GRAS status for certain food uses of ''hempseed oil'' and expressly stated that it did not believe the submission provided a sufficient basis to classify ''hempseed oil'' as GRAS through experience based on common use in food. *See* FDA Center for Food Safety & Applied Nutrition, Office of Premarket Approval, Agency Response Letter, GRAS Notice No. GRN 00035 (August 24, 2000), reproduced at *www.cfsan.fda.gov/rdb/opa-g035.html.* In making this determination, the FDA did not evaluate whether there would be a basis for GRAS status through scientific procedures or whether ''hempseed oil'' would meet the standard for premarket approval as a food additive. *Id.*

[16] To establish a violation of the CSA, the government does not have to prove that the controlled substance in question was of sufficient quantity to produce a psychoactive effect. *United States* v. *Nelson,* 499 F.2d 965 (8th Cir. 1974).

[17] *See, e.g., United States* v. *Holland,* 884 F.2d 354, 357 (8th Cir. 1989), cert. denied, 493 U.S. 997 (1989); *see also* 21 U.S.C. 812(c), schedule I(c) (listing ''any material, compound, mixture, or preparation, which contains any quantity'' of hallucinogenic substances in schedule I).

[18] In this context, ''valid'' means that the technique measures what it is designed to measure, and ''reliable'' means that the technique can be replicated by other laboratories.

[19] *See, e.g.,* M.V. Doig & R. Andela, *Analysis of pharmacologically active cannabinoids by GC–MS,* Chromatographia 52 (Supp.): S101–S102 (2000); P.D. Felgate & A.C. Dinan, *The determination of delta-9-tetrahydrocannabinol and 11-Nor-9-carboxy-delta-9-tetrahydrocannabinol in whole blood using solvent extraction combined with polar solid-phase extraction,* Journal of Analytical Toxicology 24:127–132 (2000); K. Ndjoko, *et al., Analysis of cannabinoids by liquid chromatography-thermospray mass spectrometry* and liquid chromatography-tandem mass spectrometry, Chromatographia 47:72–76 (1998); B.J. Gudzinowicz & M.J. Gudzinowicz, *Analysis of drugs and metabolites by gas chromatography-mass spectrometry,* Volume 7: Natural, pyrolytic, and metabolic products of tobacco and marijuana, NY: Marcel Dekker, Inc. (1980).

[20] What constitutes the appropriate method of testing may vary depending on the circumstances. In any criminal prosecution, civil or administrative action, or other legal proceeding arising under the CSA, where the government must prove the presence of a controlled substance, the government may do so by the introduction of any evidence sufficient under law to prove such fact. *See, e.g., United States* v. *Bryce,* 208 F.3d 346, 352–354 (2d Cir. 2000).

within DEA's authority to serve as such a testing laboratory for private entities. Nor would it be appropriate for DEA to certify laboratories for these analyses. Manufacturers and distributors of ''hemp'' food and beverage products may, of course, conduct their own testing to determine to their own satisfaction that their products contain no THC. However, they are under no obligation to do so. Whether or not they conduct such testing, the law remains the same: if a food or beverage product contains any measurable amount of THC, it is an illegal schedule I controlled substance; if it contains no THC, it is a legal, noncontrolled substance.

Comments Regarding Drug Screening

Several commenters asserted that, in deciding whether or not to exempt THC-containing food and beverage products, DEA should not concern itself with the possibility that persons who eat such products then undergo drug screening might test positive for THC. Some of these commenters suggested that ''hemp'' food and beverage manufacturers have taken steps to ensure that the amount of THC in their products is low enough to avoid causing a positive drug screen. Given these comments, it must be emphasized that, while effective drug screening in appropriate circumstances is of concern to DEA and was part of the agency's overall consideration, the ultimate decision about which products to exempt from control did not turn on drug testing considerations. Rather, as explained above, DEA exempted certain products to the extent permissible by the CSA and consistent with the public welfare within the meaning of the Act.

Although drug testing was not the basis for the exemptions, in view of the comments about drug testing, it is worth reiterating that there are no uniform standards of what constitutes a ''hemp'' product. It cannot be said that, merely because a product has the word ''hemp'' on the label, it will necessarily contain a certain low amount of THC. Therefore, it cannot automatically be said that a food or beverage product marketed as containing ''hemp'' will never cause a positive drug test for THC. In fact, as noted above, one published scientific study found that eating ''hempseed'' salad oil (of a variety sold in ''hemp shops'' in Switzerland) did cause human research subjects to test positive for THC.

Comments Regarding the Cultivation of Cannabis for Industrial Purposes

Some commenters asserted that the United States should promote the cultivation of cannabis for industrial purposes based on economic and environmental considerations. These commenters seemed to misunderstand the nature of the rules being finalized today. The rules do not impose restrictions on, or even address, the cultivation of cannabis. Rather, as the text accompanying the rules makes clear, the rules clarify which cannabis-derived products are controlled and which are exempted from control.

As stated above, it has always been the case since the enactment of the CSA in 1970 that any person who seeks to lawfully grow cannabis for any purpose (including the production of ''hemp'' for industrial purposes) must obtain a DEA registration. This requirement remains in effect and is not modified by the rules DEA is finalizing today.

Regulatory Certifications

Economic Impact of This Rule

This rule allows economic activity that would otherwise be prohibited. As has now been made clear under the DEA regulations being finalized today, all products that contain any amount of THC are schedule I controlled substances unless they are specifically listed in another schedule or exempted from control. Thus, without the exemptions provided in this final rule, industrial ''hemp'' products such as paper, rope, clothing, and animal feed would be subject to the provisions of the CSA and DEA regulations that govern schedule I controlled substances if they contained THC. The CSA permits the use of schedule I controlled substances for industrial purposes, but only under strictly regulated conditions. By virtue of this rule, however, most industrial ''hemp'' products are exempt from all provisions of the CSA and DEA regulations. Thus, this rule imposes no regulatory restrictions on any economic activities; rather, it removes regulatory restrictions on certain economic activities.

Regulatory Flexibility Act

For the reasons provided in the foregoing paragraph, the Acting Administrator hereby certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). Therefore, a final regulatory flexibility analysis is not required for this final rule.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, section 3(f). Accordingly, this rule has been reviewed by the Office of Management and Budget for purposes of Executive Order 12866.

Executive Order 13132

This rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rule does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Therefore, no actions are necessary under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not likely to result in any of the following: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Accordingly, under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), this is not a major rule as defined in 5 U.S.C. 804. Therefore, the provisions of SBREFA relating to major rules are inapplicable to this rule. However, a copy of this rule has been sent to the Office of Advocacy, Small Business Administration. Further, a copy of this rule will be submitted to each House of the Congress and to the Comptroller General in accordance with SBREFA (5 U.S.C. 801).

Paperwork Reduction Act of 1995

This rule does not involve collection of information within the meaning of the Paperwork Reduction Act of 1995.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Final Rule

Pursuant to the authority vested in the Attorney General under sections 201, 202, and 501(b) of the CSA (21 U.S.C. 811, 812, and 871(b)), delegated to the Administrator and Deputy Administrator pursuant to section 501(a) (21 U.S.C. 871(a)) and as specified in 28 CFR 0.100, the Acting Administrator hereby orders that the interim rule amending title 21 of the Code of Federal Regulations, part 1308, to include new § 1308.35, which was published at 66 FR 51539, on October 9, 2001, is adopted as a final rule without change.

Dated: March 18, 2003.

John B. Brown III,

Acting Administrator.

[FR Doc. 03–6805 Filed 3–20–03; 8:45 am]

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